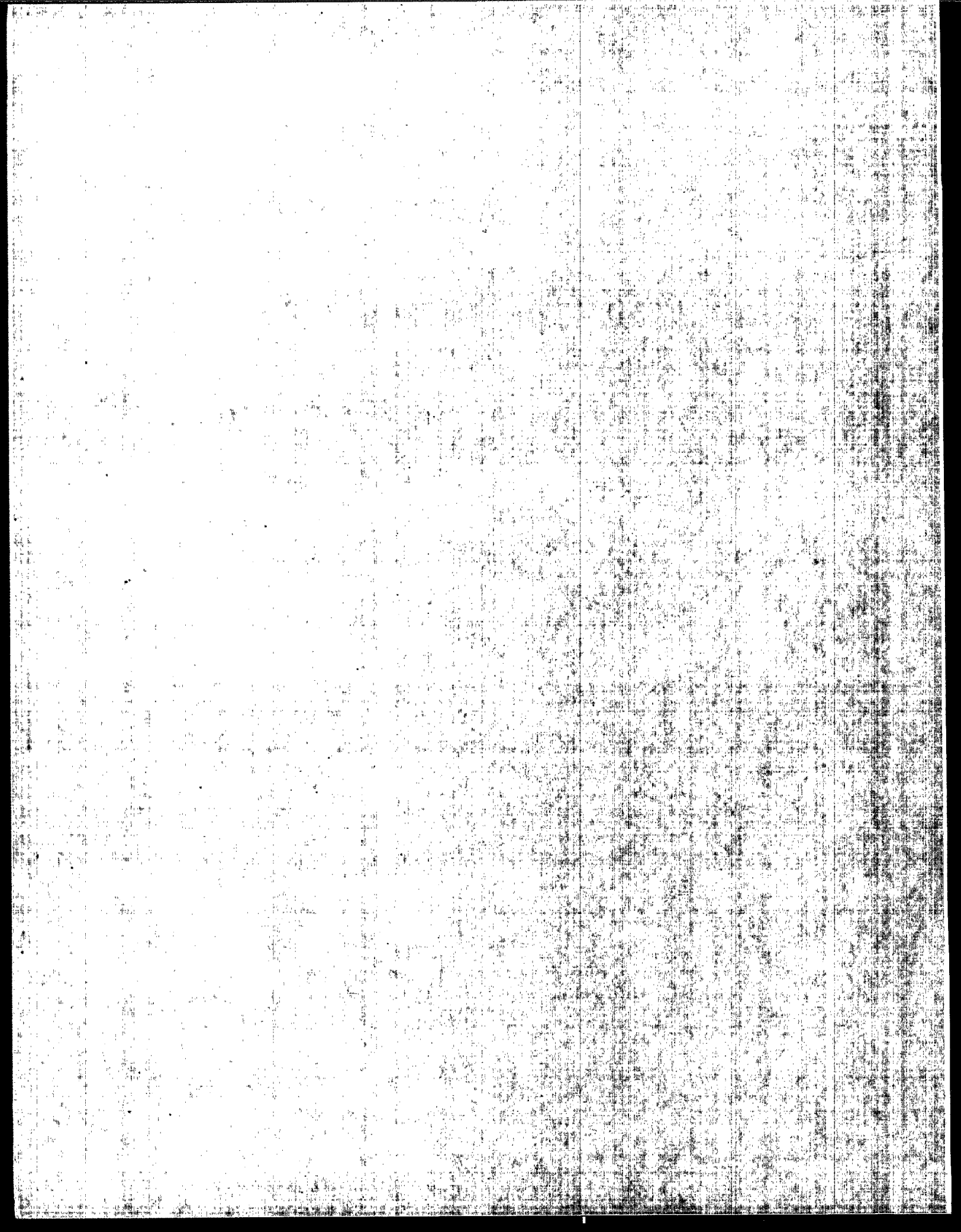


530 UST 88003

UNDERGROUND STORAGE TANKS:

Building State Compliance Programs

U.S. Environmental Protection Agency
Office of Underground Storage Tanks
August 1988



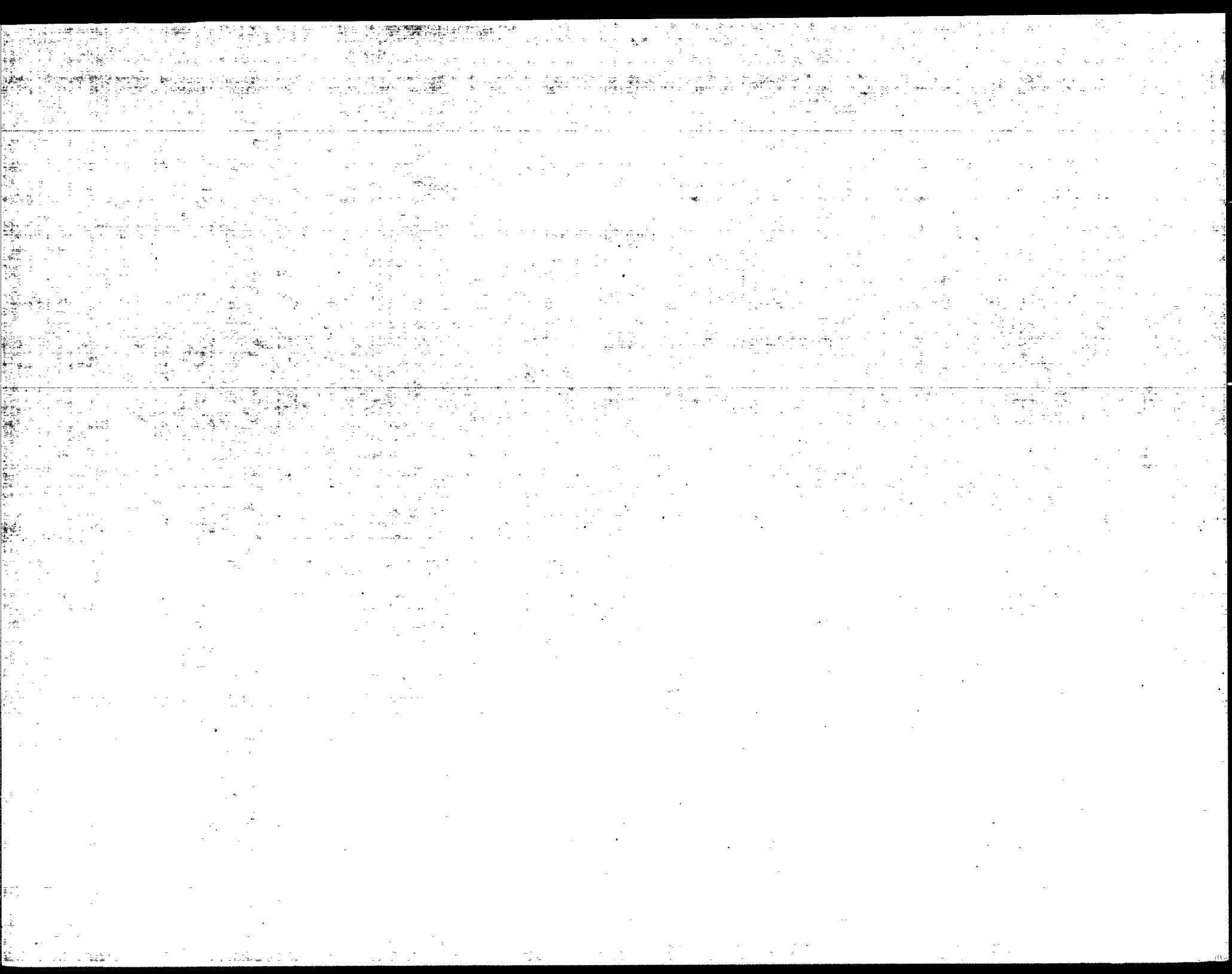
ACKNOWLEDGEMENTS

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Karen Reed
EPA Project Manager
August 1988



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CHAPTER I.

HOW THIS HANDBOOK CAN HELP YOU

This Handbook was developed for State and local officials who are building or improving their underground storage tank (UST) compliance programs. Compliance programs are considered to include compliance monitoring activities, enforcement actions, and outreach. The Handbook provides some useful information on every aspect of these programs and points out sources where you might go for additional help or information. U.S. Environmental Protection Agency (EPA) Regional staff might also use this Handbook to help States and localities develop or upgrade their programs.

Developing an effective UST compliance program can be a difficult and complex task. To begin with, the regulated community is large and diverse, and it includes many small, independent businesses with limited financial resources. In addition, the compliance monitoring efforts must cover a wide array of regulations that address the life cycle of a tank, from installation to closure. Finally, State and local programs will probably have limited resources for monitoring the compliance status of this diverse regulated community and enforcing against violations.

In view of these difficulties, EPA's role is to assist you in developing your State or local program. One way is to share information about procedures and techniques currently being used, so that other compliance programs can benefit from that real world experience and function more effectively and efficiently.

HOW THE INFORMATION WAS GATHERED

This Handbook presents an analysis of information collected from seven States with existing UST programs, as well as information obtained through reports or other sources on State and Federal enforcement activities. The States reviewed were: California, Maryland,

Massachusetts, Minnesota, New Mexico, Rhode Island, and Texas. These States were selected because of the level of their UST program development, their legislative background, involvement of local government, geographic diversity, and dependence on ground water for drinking water.

Information was obtained during on-site interviews with UST program officials in each State, county, or city. A protocol was developed to provide a framework for the discussion. This protocol included a series of questions on the following aspects of each State's or locality's UST program:

- Program background and legal authorization,
- Organization and staffing,
- Funding and budget,
- Compliance outreach efforts,
- Compliance monitoring and inspections,
- Enforcement response actions, and
- Future plans.

The information obtained during the interviews was summarized in separate reports on each State; these summary reports were then reviewed for accuracy by the officials interviewed. The final reports are available in a separate document. A list of the UST personnel interviewed is included in this Handbook as an appendix.

HOW TO USE THIS HANDBOOK

This Handbook is intended for use as a reference guide for UST compliance programs. These compliance programs may involve any activity that leads to compliance with UST regulations. Such activities include, but are not limited to:

- Identifying the regulated community,
- Promoting compliance through outreach,

- Collecting and reviewing data on UST systems, and
- Bringing violators into compliance through formal and informal enforcement actions.

This Handbook contains a collection of examples and suggestions, not all of which will be applicable or appropriate for your program. The procedures and programs presented are not meant as an ideal; rather they are examples of programs that appear to be working. In addition, the information is by no means exhaustive, and we hope to update this Handbook with your experiences and suggestions.

Because not all the material presented here will be useful for every situation, the reader need not feel obligated to read the Handbook from cover to cover. The Handbook is divided into five chapters and an appendix as follows:

- Chapter I contains an overview of the information sources and the organization of the Handbook.
- Chapter II briefly describes the options available when setting up or augmenting an

existing UST compliance program. Examples from State visits are included.

- Chapter III discusses methods for measuring the effectiveness of an UST compliance program, including the benefits and drawbacks of different program evaluation techniques.
- Chapter IV presents brief summaries of the compliance programs being conducted in each of the seven States visited. Each summary reviews the current status of the program, the factors influencing program development, compliance monitoring and enforcement techniques currently being used in the program, and future plans. A summary matrix appears at the end of the chapter.
- Chapter V provides selected examples of the forms, fliers, letters, data sources, etc. that have been useful in compliance monitoring and enforcement.
- The appendix is a list of interviewees and contacts who provided information to EPA for use in this Handbook.

CHAPTER II.

COMPONENTS OF UST COMPLIANCE PROGRAMS

States with existing UST programs use a wide variety of compliance monitoring and enforcement techniques. The programs themselves vary greatly depending upon a number of factors, such as a State's dependency on ground water and the government infrastructure. The States differ in how they implement their programs, including how they use available statutory authority, monitor compliance, enforce against violators, and delegate program authority to local levels. This chapter provides examples of different approaches and techniques that States have developed for the following tasks:

- Developing and implementing statutory authority,
- Identifying the UST population,
- Educating the regulated community,
- Identifying violators,
- Taking enforcement actions, and
- Delegating program responsibilities to counties/cities.

Chapter V is a "User's Guide" that contains selected ideas and techniques for carrying out these program tasks. For convenience to the reader, it is organized by headings that are parallel to those found in this chapter.

DEVELOPING AND IMPLEMENTING STATUTORY AUTHORITY

Your State agency will need a minimum level of statutory authority to run an UST program. Although some States already have the statutory authority necessary for developing a comprehensive program, others will require statutory changes before their UST programs can be fully functional. Statutes are needed for the authority to perform certain essential tasks such as obtaining a temporary restraining order or being

allowed to enter and inspect a facility. There are two sources of statutory authority that can be used to develop an UST compliance program:

- Specific UST statutes; and
- Other environmental authorities.

Developing and Using Specific UST Statutes

Of course, the most direct basis for developing an UST program is to have a specific UST statute. Three of the States interviewed have such statutes: California, Minnesota, and Texas. These statutes allow the legislature to have direct input into the development of regulations by:

- Specifying the general requirements that the regulations must address;
- Setting certain minimum and maximum standards; and
- Conveying adequate authorities for enforcing the program:

Most UST statutes address the following regulatory areas: tank notification, new tank standards, leak detection and record maintenance, release reporting, corrective action, tank closure, financial responsibility, and inspections and testing. (See page 39 for additional resources for developing UST statutes.)

Using Other Environmental Authorities

If your State does not have a specific UST statute for developing a comprehensive compliance program, you may be able to use existing pollution control authorities to begin developing one. The following section describes potential opportunities for using existing authorities.

Hazardous Waste Authority

Virtually all States have developed hazardous waste regulatory programs under Subtitle C of the

Resource Conservation and Recovery Act (RCRA). Although USTs regulated under RCRA Subtitle I generally contain petroleum and chemical products, not wastes, the authority under a hazardous waste statute may extend to problems created by these products after they are released into the environment. Thus, an agency implementing this authority may be able to apply it to UST releases by:

- Requiring release reporting;
- Identifying and inspecting facilities that have had releases;
- Requiring testing of tanks suspected to be leaking;
- Ordering corrective actions; and
- Suing to recover cleanup costs.

In addition, if your State has a hazardous waste statute, it may give your agency at least limited authority to impose regulatory requirements on hazardous substances that are not wastes. In Maryland, releases from chemical tanks may be regulated under the State's hazardous waste laws. In New Mexico, the hazardous waste law provides authority for regulating both petroleum and chemical USTs.

Oil or Water Pollution Control Authorities

Some States have authority to regulate and respond to releases from USTs under broad oil or water pollution control statutes. Although the authority may be insufficient to develop a comprehensive UST program (e.g., it may not address chemical USTs), it may be useful as a first step in program development. This authority may be particularly useful if your State's hazardous waste statute does not cover petroleum released into the environment.

The oil or water pollution control authority might be exercised to require the same types of activities in response to releases that are identified in the hazardous waste authority discussion above. In addition, the statutes may also give your agency the authority to gather information about the regulated community or to impose certain regulatory requirements (e.g., tank tightness

testing). In Maryland, the State was able to promulgate regulations specific to USTs under the authority of its oil pollution control statute. Rhode Island promulgated its UST regulations under its water pollution laws. The Water Quality Act in New Mexico provides the State with cleanup standards for releases of petroleum and other substances from USTs.

Hazardous Substance Authority

Your State may have a statute authorizing an implementing agency to clean up or order responsible parties to clean up releases of hazardous substances. These statutes may be similar to the Federal Government's Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), which established the "Superfund" to pay for the cleanup of hazardous substances. Similar State-level "Superfund" statutes may be used to address releases from chemical USTs; in some States, they may even be used to address releases from petroleum USTs. In Massachusetts, the UST cleanup program is administered under the State's version of the Superfund law. Such statutes may also authorize an agency to conduct other activities useful in formulating UST programs. For example, they may enable an agency to require release reporting, to gather information on potential sources of contamination, and to inspect facilities.

Other State and Local Authorities

State and local agencies may have other sources of authority that can be used to address USTs. For example:

- Local governments are generally endowed with broad police powers that authorize them to respond to releases from and to regulate USTs (e.g., local fire codes are often applied to USTs). The experience, information, and expertise generated by these programs may be a useful starting point for developing broader UST programs.
- A State may technically own the ground water and have a responsibility to protect that valuable natural resource from misuse or

pollution. This responsibility may authorize a State agency to respond to UST releases or to regulate USTs.

- Fair trade practice laws in some States (e.g., California) can enable State or local agencies to sanction responsible parties in noncompliance with the Federal rules and any State rules during the time that a State program is being developed. This enforcement mechanism can help an implementing agency modify regulated community practices while the State UST program is being devised.

In summary, State and local agencies often have considerable authority to address many of the problems that are critical to a new or developing UST prevention and cleanup program; specifically, they often have the authority to identify and respond to releases. If these authorities exist in your State, you may be able to create the foundation for a comprehensive UST compliance program by using other environmental programs.

IDENTIFYING THE UST POPULATION

Once your State has developed the necessary statutory authority, the next step is usually to locate and characterize the regulated UST population. Being able to identify the regulated community is fundamental to a State's ability to ensure compliance with UST regulations. A comprehensive UST inventory lays the groundwork for a program's compliance monitoring and enforcement activities, such as inspections and outreach. Inventories developed by States often maintain data on UST location as well as tank age, type, proximity to aquifers, and leak detection capabilities. Such information allows program officials not only to monitor their regulated community but also to make informed management decisions regarding compliance activities. With this information, they can direct their resources to where they are needed most.

States and counties have used several methods of acquiring data and sources of information to

develop comprehensive UST inventories. Methods used include tank registrations, permits, and inspections. Sources of information include lists developed by other government agencies, notification by distributors, and reports from the general public.

Requiring Tank Registration and Permits

One customary and versatile method for keeping an up-to-date inventory is requiring that every facility in the regulated community obtain a registration or permit. Several States interviewed (California, Massachusetts, Rhode Island, and Texas) have initiated such programs for USTs by requiring that all owners or operators identified through the Federal notification requirements submit applications for continued use of their UST facilities.

The registration and permit programs vary in the level of information required from the owner or operator. Some registration programs, such as Rhode Island's, require owners or operators to notify the State of the UST's existence or of changes in its status. In Rhode Island, owners or operators of existing USTs must obtain basic registration only. However, any owner or operator wishing to install a new UST system must first get the State's approval of proposed installation plans. In contrast, in Massachusetts, all tank owners or operators must submit detailed information as part of a permit application. This information includes tank capacity, tank contents, leak protection method, and facility layout, as well as location of any wells and surface-water body within 500 feet of the facility.

Relying on Government Lists

Government entities that regulate USTs for their own programs may have compiled lists of USTs or UST locations that can be useful to State program officials. Local fire departments are the most frequent source of such lists, because USTs have often been regulated as fire hazards. Other government agencies include weights and measures departments and building departments, which typically treat UST installation and removal as a construction activity that requires a permit. In

the county programs in California, officials were able to add to their tank inventories by obtaining lists compiled for a vapor-recovery effort conducted throughout the State.

Conducting Inspections

Many USTs can be discovered as a result of routine inspections. California officials stated that routine UST inspections often lead to the discovery of other nearby UST systems that are not part of the State's inventory. Oftentimes, USTs are found while another type of inspection is being conducted (such as a health inspection, a hazardous material inspection, or a building inspection). These accidental UST discoveries can add considerably to a State program's inventory. To facilitate the discovery of USTs through inspections, program officials can encourage their inspectors to look for new USTs.

Working with Distributors

Several States indicated that the distributors responsible for filling tanks are another potential source of information on UST location. Distributors can be utilized in an UST inventory effort in three ways. First, if legally permissible, distributors can be required to make their customer lists available to UST program officials. Second, as in Minnesota, distributors can be required to pass along notification materials to their customers. Third, distributors can be required to fill only tanks that have been registered. For example, Iowa recently passed a law requiring the owner or operator of a registered tank to affix a tag to the fill pipe of the tank. If a distributor discovers a tank without a tag, he is allowed to fill the tank only once, and he must provide the owner or operator with a registration form and report the tank to the Department of Natural Resources. The distributor is not allowed to fill the tank a second time unless the owner or operator has registered the tank. Exhibit II-1

shows Iowa's Department of Natural Resources UST tag. (See page 41 for the discussion of UST inventories.)

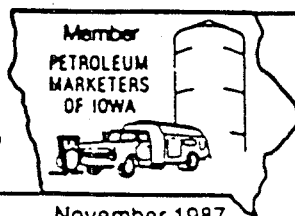
Using Other Sources of Information

In addition to the sources discussed above, States have mentioned several other methods of adding to a program's inventory of USTs. One such method is used by California's South County Fire Authority which directs the State's UST program in the Cities of Belmont and San Carlos. The Fire Authority regularly has its engine companies drive through the streets looking for visible vent pipes because these pipes often reveal tanks that are not part of the Fire Authority's UST inventory.

Several States noted that they rely on notification from groups, such as real estate agents or utility workers, for information on UST locations. In Iowa, real estate agents must file a "Real Estate Groundwater Hazards Statement" for every property transfer. This statement includes information on any USTs on the property and is filed with the County Recorder's Office. The State can then compare the information with that submitted by the owner or operator to verify the accuracy of facility reports. New Mexico indicated that it has been made aware of USTs by reports from utility or construction workers doing below-ground work.

USTs are often reported to program officials by concerned citizens. Maryland and New Mexico both cited citizen complaints as an important source of UST information. These citizens are often purchasers of property that have USTs, and they need direction on their responsibilities. They may also be residents of areas where an UST is being installed and are calling to report the installation. UST programs should have a system for checking these reported USTs against the current inventory and adding new USTs as they are reported.

**C-STORE/
GASOLINE
RETAILER**



NEWSLETTER

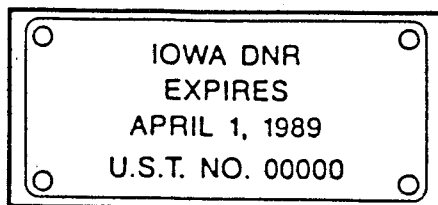
November 1987

Iowa Underground Tank Fees and Tags

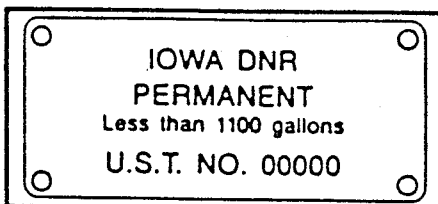
Displayed here are the actual sizes of the proposed new Iowa Department of Natural Resources underground tank tags. The Underground Storage Tank (UST) number is only a DNR record for who received the tag. The number has no relationship to the underground tank's original registry number.

Iowa's registered underground tank owners will soon be receiving Iowa Department of Natural Resources' invoices for a \$15 per year tank fee for all tanks 1,101 gallons and over. Once the fee is paid, the DNR will issue a one year (1988) tank tag to be attached to the fill pipe. This annual fee will be assessed every year unless a law change is enacted. The deadline for paying this annual tank tag fee is January 15, 1988. All registered underground tanks 1,100 gallons or less will not be assessed the annual fee and will receive a permanent fill pipe registration tag from Iowa's DNR.

The 1988 tank tags are part of Iowa's recent law change to prohibit petroleum cargo tank deliveries into underground tanks that are not registered. A one-time delivery is allowed if the delivery person reports the unregis-



Annual underground tank tag color will change each year.



Permanent underground tank tag will be aluminum color.

tered tank to the Iowa DNR and provides the tank's owner with a registration form. The tank owner has 15 days from the date the Iowa DNR receives the petroleum delivery person's report to register the tank for \$10. After 15 days, the registration fee jumps to \$25.

Bulk petroleum delivery persons are not required to report deliveries of underground tanks that are exempt from registration. These exempt tanks would not have a fill pipe tag. Exempt are underground heating oil tanks for consumptive use on the premises where stored, residential (private non-commercial) and farm underground tanks of 1,100 gallons or less until July 1, 1989. Iowa's law requires all existing unregistered farm and residential underground tanks storing motor fuels to register at no charge by July 1, 1989.

EDUCATING THE REGULATED COMMUNITY

Most of the States interviewed have developed procedures for educating the regulated community and the public as a means of encouraging compliance. Given the large size of the UST population and the limited resources available for compliance monitoring and inspections, the State UST programs will have to rely heavily on voluntary compliance. The primary purpose of an effective outreach program is to educate the regulated community about the UST regulations. In addition, the regulated community can also be made aware of potential penalties for violations. Outreach to the public helps to develop citizen awareness and thus encourages the reporting of UST releases and violations.

An outreach program is most effective in the initial stages of program development, when UST program requirements are first issued. While it is important to make owners and operators aware of the regulations, outreach can also be used to establish a working relationship between the State or local UST agency and the public. The usefulness of an outreach program will level out over time as the regulated community becomes more knowledgeable and as certain behavior patterns become established.

Interviews with the seven States indicated that many different techniques are being used to inform the regulated community and the public about UST regulations and State program requirements. A common means of reaching the regulated community is to identify certain industry groups as representative of the regulated community and then develop relationships with these groups. Several examples follow.

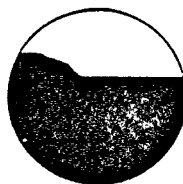
- The Texas UST staff maintains close contact with the Texas Oil Marketer's Association, has submitted information for UST-related articles for the Association's newsletter, and has been featured at several regional Association meetings.
- The Maryland Department of Environment established an advisory committee composed

of members from local government, industry, and community groups to aid in communicating UST issues.

- Minnesota advertised its notification requirements by contacting the Independent Service Station Organization and has publicized information in newspapers and the Hazardous Waste Newsletter.
- The New Mexico UST Program Manager meets monthly with petroleum marketers, dealer associations, and other industry groups to keep them apprised of developments in UST regulations and programs.
- Rhode Island has published notices of new regulations in oil industry magazines and sent information letters to oil dealers and their customers and to service stations owners.

A primary disadvantage to such targeted outreach techniques, however, is that certain groups within the regulated community may be missed. To reach a wider audience within the regulated community and to educate the general public, some State and county programs use standard communication techniques such as press releases, public service announcements, and mass mailings.

Maryland developed public notice fliers that describe the regulatory requirements for tank testing, indicate test methods approved by the State, and provide telephone numbers and addresses for further information. (See Exhibit II-2.) Rhode Island has been able to reach out to both the regulated community and the general public by having articles on violations published in the newspapers. The articles included the name of the company in violation, the penalty, and the terms of the agreement. In particular, articles that focused on the State's enforcement response have drawn attention from the public. Minnesota publicized its UST requirements and held a series of public meetings at which question-and-answer sessions were conducted. Fresno County (California) enlisted the help of UST contractors in distributing information among members of the regulated community and wrote letters to owners

**Maryland Department of Natural Resources**

Water Resources Administration
Tawes State Office Building
Annapolis, Maryland 21401-9974

**IF YOU HAD AN UNDERGROUND
OIL STORAGE TANK INSTALLED
IN MARYLAND PRIOR TO 1971
YOU ARE REQUIRED
BY MARYLAND OIL CONTROL LAW
AND REGULATIONS TO HAVE THIS SYSTEM
TESTED FOR TIGHTNESS
BEFORE JANUARY 28, 1987**

**ALL UNDERGROUND OIL STORAGE TANKS BURIED FOR 15 YEARS
OR MORE EXCEPT SINGLE FAMILY RESIDENCES AND
FARM STORAGE TANKS UNDER 10,100 GALLONS MUST BE TESTED.**

**TESTS MUST BE PERFORMED BY COMPANIES USING TEST METHODS
APPROVED BY THE DEPARTMENT OF NATURAL RESOURCES,
WATER RESOURCES ADMINISTRATION, AS LISTED BELOW:**

PETRO-TITE™**LEAK LOKATOR™****EZY-CHECK™**

**FOR MORE INFORMATION AND A LIST OF TANK TESTERS CONTACT
THE DEPARTMENT OF NATURAL RESOURCES,
WATER RESOURCES ADMINISTRATION,
OIL CONTROL DIVISION,
TAWES STATE OFFICE BUILDING,
ANNAPOLIS, MARYLAND 21401
OR CALL (301) 269-2105.**

Help keep Maryland waters clean!

and operators outlining the permit requirements. (See page 43 for further discussion on outreach techniques.)

IDENTIFYING VIOLATORS

To have an effective UST compliance program, a State must be able to identify violators and bring them into compliance. The interviews indicated that some existing State compliance programs do not rely solely on traditional periodic inspections of random facilities to monitor compliance. Rather, some States have developed compliance monitoring programs that incorporate a wide range of procedures, including issuing UST permits, reviewing reports submitted by the regulated community, and targeting certain portions of the UST population for inspections. States have used these techniques alone or in combination. Depending upon a State's resources and capabilities, different emphases were placed on one type of compliance monitoring procedure over another. Examples of different techniques for collecting and monitoring data on the compliance status of the regulated community are:

- Requiring owners and operators to submit data,
- Supplementing installation and closure notification data,
- Expanding UST release report requirements,
- Requiring operating permits,
- Certifying UST installers and testers, and
- Conducting on-site inspections.

Requiring Owners and Operators to Submit Data

One of the least resource-intensive methods for monitoring compliance of the regulated community is to use the data already available in the records and reports submitted by UST facility owners or operators. At a minimum, the Federal regulations will require that owners or operators keep records on leak detection devices, tank tightness testing and monitoring results, corrosion protection systems, and repairs and closures. These records are generally kept at the UST

facilities and must be made available to the State upon request of the implementing agency. Federal regulations will also require owners and operators to notify the State implementing agency of any UST releases and subsequent actions taken to correct them.

Some States have expanded these reporting requirements and developed additional ones as a means of monitoring compliance. Under the Federal regulations, owners or operators do not have to submit the records maintained at the facilities, except by request. However, States may require owners or operators to submit on a regular basis detailed information on UST installations and closures. The State implementing agency can use this information to determine which installation/closure activities to monitor, or it can target facilities that may be more likely to have a release. Furthermore, although leak notification is a Federal requirement, a State may require that such notifications include more comprehensive information than is Federally mandated. Clearly, the notification itself allows a State to respond quickly to a release. However, by requiring additional information in the same report, the State can not only determine which release incidents require more immediate attention but also check the facility's compliance in other areas.

The advantage of requiring such comprehensive reporting is that it helps States minimize resources for compliance monitoring by allowing them to target facilities for future inspections. For some States, this may be the only way in which they can monitor the entire regulated community. However, to use this type of data collection effectively, States must have the resources to collect and review the voluminous records, identify those requiring follow-up, and inspect selected facilities to verify the accuracy of the data. Furthermore, a State that relies heavily on reported data plays a passive role in compliance monitoring and must count on its regulated community to provide accurate information. For that reason, the State agency must be able to take enforcement actions when necessary to provide an incentive for compliance.

Supplementing Installation and Closure Notification Data

Data on UST installations and closures can be used to monitor compliance. The Federal regulations will require owners or operators to report UST installations and to maintain records of closures. However, some States have gone beyond these regulations by requiring advance notification of installations and closures and additional information on these activities. In some cases, the State may use approval of installation data as a condition for facility operation. Prior review of installation and closure data can also help the State agency identify facilities that may need closer monitoring in the future.

In Rhode Island and Texas, comprehensive information on UST installation is required as a means of ensuring proper installation procedures and use. In Rhode Island, owners must submit installation plans to the State for approval prior to operating a new UST system. The State reviews the plans to ensure that they are in compliance with regulations and to assess whether more stringent, site-specific requirements need to be imposed. Through this process, the State may become aware that an UST is being installed near a vital source of drinking water. Because of this, the State may require more stringent monitoring requirements or may target the facility for comprehensive, future inspections. Generally, State officials do not oversee installation sites; instead, they rely heavily on the information provided in the installation plan. The Texas UST interim regulations require 30 days prior notice of installation, although installation plan approval is not required. The Texas Water Commission reserves the right to review installation data, which includes engineering plans and specifications, quality assurance plans, leak monitoring and corrosion protection systems, chemical compatibility data, and site geological data.

Several of the States require owners or operators to submit notification and detailed information on UST closures. This information can be used to determine which closures may require State oversight or assistance. For example, California requires that owners or operators report any plans to temporarily or permanently close an UST system. Prior to permanent closure, the owner must submit to the local agency all previous monitoring data and a proposal describing the method of closure to be used. The State also requires that a notice be placed on the property deed indicating the location of any closed USTs left in the ground. For UST removal, the owner or operator must submit to the local agency documentation that indicates proper disposal of the tank. Other examples include:

- UST owners in Texas must also notify the Texas Water Commission prior to permanently removing an UST from service. Such notice must describe the procedures and schedule for removal.
- Rhode Island UST closure applications must contain information on all previous leak incidents, type of monitoring wells, and distance from drinking water sources.
- In Massachusetts, UST owners or operators must obtain an approved certificate prior to closure. This certificate serves as a manifest for tracking the proper closure and disposal of the tank.

Effective use of reported data can be facilitated by the development of data bases designed for monitoring such data. Contra Costa County in California has developed a comprehensive data management system that includes information such as installation and removal dates, soil sample and tank tightness testing results, and monitoring records. (See Exhibit II-3 and page 46 for a description of the data base.)

TANK STATUS

01 Operating, New Permit (5 year permit)
02 Operating, Conditional Permit (either Mon Alt #8 -3yr permit
or Temp closure - 2 yr permit)

A1 Recieved money, Application
A2 Tanks removed, pending soil results
A3 Soil results OK
A4 Soil results not OK
A7 Abandoned in place
A8 Removed prior to August 1, 1985

W# Monitoring well in place
E Exempt
R Removed from list, this tank never existed

N1 No Tank Test
N2 No Monitoring Plan
N3 No Application
N4 No Money

B1
B2
B3

Expanding Tank Release Report Requirements

In some States with limited UST resources, the only compliance monitoring activities currently being conducted are inspections following notification of a release. Although UST owners or operators are required to notify their State agency of all leaks, three of the States interviewed (California, Massachusetts, and New Mexico) require that responsible parties also provide detailed reports of each release incident.

- California requires a verbal notification within 24 hours and a written report within 5 days containing detailed information on the incident, including the type and amount of substance released, the results of ground-water and soil sampling, and the proposed corrective actions.
- Massachusetts maintains records of sites that have had releases or that currently require remedial action. A file is maintained for each incident, and the State is considering developing a central data base.
- New Mexico has developed a detailed questionnaire for each release incident. The data collected include the threat to a water supply, the potential for toxic vapors or explosivity, and any mitigating actions taken. The information is subsequently assigned a value depending upon its threat to human health and the environment and is used to prioritize responses to the site.

This reporting assists the implementing agency in determining the priority for responding to releases prior to examining each site. In addition, the State can use the additional information as a means of monitoring compliance with other requirements.

Requiring Operating Permits

Some State programs rely on comprehensive permitting programs as a means of monitoring the compliance status of all operating UST systems. Permitting programs differ from simple registration programs in that they typically require that the owner or operator meet a standard of performance prior to being issued the permit,

while registration programs primarily serve as an inventory tool. In permitting programs, the compliance status of an UST facility can be checked in several ways (e.g., by inspecting it prior to issuing the permit or by requiring the owner or operator to submit results of tank tightness tests).

The primary advantage of a permitting program is that because tank owners or operators must obtain a permit in order to operate their UST facility, there is a major incentive for them to be in compliance. In addition, the permit renewal process provides a regular means of monitoring compliance. Permit requirements can also be easily monitored by requiring that permits be displayed so that they can be checked during routine inspections. Some States (e.g., Iowa, Oregon) have passed laws enabling vendors to assist in monitoring compliance with permit regulations. In Iowa, distributors may not fill tanks without permits more than once, and they must notify the owner or operator of the permit requirements.

The primary disadvantage to permitting programs is the level of resources required to ensure that every operating UST system or facility has a permit and that every UST with a permit is in compliance. In particular, extensive resources are needed to contact all owners or operators, to provide assistance in the permitting process, and to review permit documentation, particularly if renewals are frequent.

Of the States interviewed, only California and Massachusetts required that all USTs throughout the State be issued permits for operation. The most extensive permitting program among the States interviewed is that of California. The State program, which is implemented at the county level, was established to ensure that every facility issued a permit, and thus every UST in operation, is in compliance. (See page 51 for a description of San Mateo County's permit process.) The initial permit application requires information on UST monitoring equipment, and the permit is not issued until the UST system has been inspected to ensure that it complies with the regulations and terms of the permit. Requirements of the permit include certification that secondary containment

has met regulated standards and a description of the proposed monitoring system. UST systems that do not meet the requirements are closed. Several of the California counties have developed innovative techniques for promoting compliance through the use of permitting programs. For example, San Mateo County can notify the credit agency of owners or operators who fail to submit permit fees.

In Massachusetts, permits are issued by the State but the permitting program is essentially managed at the local level with the local fire department handling inspections and enforcement. In Maryland, the State program does not require permits, but several of the county programs do. In Prince George's County, for example, all new USTs must go through a permitting process which entails an inspection of the UST installation, pressure testing, and precision testing once the UST is filled. Baltimore County has permit requirements that include an installation inspection and two tank tightness tests prior to permit issuance.

Certifying UST Installers and Testers

Several States certify tank installers or testers as a means of providing quality control and ensuring that these activities comply with the regulations. In Maine, for example, UST installers applying for certification are provided training materials and must be examined every 2 years to be certified. (See page 65 for more information on this certification program.) New York State certifies UST installers who then must verify that each installation they conduct meets State requirements. Florida has set up a licensing program for UST installers, testers, and removers.

Of the seven States interviewed, three currently certify UST service techniques or personnel. Rhode Island certifies certain tank testing procedures that have been developed by particular companies. Certification of the testing contractors themselves is the responsibility of the company franchising the particular test method, but all certified contractors are required to register with the State. Minnesota not only tests installers for competence before issuing a renewable certificate

but also plans to conduct training programs. Both Massachusetts and New Mexico have plans to establish certification programs. Like Rhode Island, Massachusetts is planning to certify several testing procedures. New Mexico intends to certify UST installers to ensure quality control in installation, thus reducing the number of installation failures.

The advantage of certification is that it reduces the need for the presence of a State inspector at each UST installation or testing event. Thus, these States can limit their direct involvement to follow-up inspections and possible enforcement actions if an UST system fails the test or is improperly installed. However, some State officials have expressed concern regarding the reliability of certified testers and installers and the accuracy of their procedures. Minnesota and Maryland have controlled for false positive responses in testing results by requiring monitoring wells at sites where test failures are reported. False negative results, which indicate that an UST system is safe when it may actually not be, are more problematic for State compliance efforts.

Conducting On-Site Inspections

Perhaps the most standard and best-known technique for monitoring compliance is to conduct on-site inspections. Traditional inspection programs involve periodic, comprehensive inspections of facilities chosen at random. Many States currently do not have the resources to devote to this type of inspection program. As a consequence, they are often limited to conducting inspections in response to notification of releases or other violations. Often, the first step in developing an expanded inspection program is to target the segment of the UST population that presents the greatest risk to public health and the environment. Expanded programs are more likely to occur when comprehensive data on the UST population (e.g., tank location, size, type, age, and use) have been collected. States that do conduct inspections have developed innovative ways to reduce resource requirements for them. These different approaches to inspections are described below.

Follow-Up Inspections

In general, States initially focus their inspection resources on following up reports of UST leaks or other indicators of potential releases or violations. Of the States interviewed, four (Maryland, Minnesota, New Mexico, and Texas) are currently limited by resource constraints to conduct inspections primarily in response to complaints of leaks, failures during UST testing, or notifications of violations. However, these States indicated plans to expand their inspection programs.

In Maryland, inspectors have responded to complaints from residents, utility service workers, and the fire department about odors from tank leaks. Presently, much of the information received comes from the tank testing companies or UST owners who must report tank test failures. In current practice, inspectors following up on test failures use this opportunity to check the facility's status with all other regulations.

New Mexico devotes most of its inspection resources to investigating notifications of UST releases. A number of different groups (e.g., private citizens, utility companies, UST owners) keep the State UST staff informed of potential or known releases from USTs. In addition, the environmental department field staff may also respond to potential leaks or violations because they are familiar with activities in their areas.

The UST program in Minnesota is release-oriented, and the majority of inspection and enforcement activities are performed once a leak or potential leak is reported. Because the State UST staff is very limited, the State agency reserves its staff for field work on the most severe cases and uses local fire departments and other municipal agencies whenever possible to investigate releases.

Targeted Inspections

Several of the States interviewed indicated that they are planning to expand their current inspection programs to include more preventive inspections. Preventive inspections typically check for compliance with regulations designed to

prevent releases, such as requirements that owners or operators maintain UST system leak detection devices or keep track of product inventory. (See page 75 for an example of an inspection checklist.) The purpose of the more preventive inspections is to detect problems before they occur, to deter noncompliance, and to identify those facilities that may have more serious problems.

Because inspection resources are limited, however, most States are planning to or already have prioritized their inspections to certain groups of UST systems that pose greater risk to human health and the environment. Examples of such USTs include: aging USTs, which have a greater chance of leaking; UST systems located near sources of drinking water or ground water; and UST facilities with a history of significant violations. Maryland is planning to implement a methodology for targeting certain subsets of the UST population based on risk to the environment. This methodology was developed as part of a study on UST population and ground-water sensitivity in the Baltimore area. Maryland is planning to use this methodology in other regions of the State to target areas on which compliance monitoring and inspection activities should be focused. In Massachusetts, the State-level UST program is administered under the authority of the State's "Superfund" program, which focuses on contamination from releases and abandoned disposal sites. As a result, the site inspections conducted by the State UST staff are limited to those sites suspected of being contaminated with oil or other hazardous substances resulting from UST releases. However, local fire officials may conduct routine inspections in their areas.

Alternatively, some State and county programs have targeted UST-related activities (e.g., installations or closures) for inspections. Rhode Island focuses most of its inspection activity on UST system closures. Prior to closures, facility owners or operators are required to submit a closure application, which includes information on all previous leak incidents. Although UST systems can be closed upon approval, the State has an inspector present at every closure to ensure that no releases have occurred. Several counties in

California (e.g., Contra Costa County and South County) also target closures. In all of these programs, compliance is driven by the certainty that site contamination will be discovered and remediated during at least one critical event. However, if a release has already occurred, it may be too late to prevent some environmental damage, particularly to ground water.

Other State or county programs focus on UST installation activities. In California, the San Diego County UST staff has inspected all new UST installations and removals since the county program was established in 1984. State UST officials in New Mexico are aware that the most common and the most catastrophic leaks have often been from installation failures. The State believes that more stringent oversight and control of installations will minimize environmental damage from leaking USTs. Therefore, New Mexico is planning to focus inspections on preventing releases caused by defective installations. Additional spot-check inspections of tanks will be conducted on a case-by-case basis.

Alternative Means of Inspection

Even with increased inspection capabilities, States often delegate some inspection responsibilities to alternative inspectors, such as members of governmental entities that are already periodically present at UST facilities. A number of government programs, ranging from fire safety to consumer affairs, require the presence of government personnel at UST sites. Some State and local agencies have "piggy-backed" their inspection needs onto the inspection program of these agencies. Specifically, many agencies rely on fire marshals or plumbing inspectors to conduct technical UST inspections when at a site.

California indicated that it had relied on the services of alternative inspectors in the initial stages of its permit program. The demand for inspection resources was high at the beginning of the California program because all UST facilities requesting permits had to be inspected. To alleviate the shortage of inspectors, some counties used inspectors from other programs (usually

health departments) to conduct the required inspections. Once the permits were issued, the burden of inspections was greatly reduced.

In Minnesota's response-oriented program, releases are often investigated by the responsible party. Minnesota has a detailed petroleum tank release investigation form that serves as a set of guidelines for both remedial investigation reports and corrective action proposals. (See page 85 for a description of the report.) Once a release has been reported and documented, this form allows the implementing agency to delegate the investigation and subsequent corrective action to the responsible party.

TAKING ENFORCEMENT ACTIONS

Effective enforcement response procedures are necessary in order to take action against violators, bring them into compliance, and deter other violators. Interviews with UST program officials indicate that many of them prefer to use a combination of formal and informal enforcement mechanisms to achieve compliance. Formal enforcement is considered here to include any action taken under the authority contained in a statute (e.g., issuing a formal notice of violation (NOV) or administrative order, or taking judicial action). Informal enforcement actions are any other actions taken to achieve compliance, including warning letters and other innovative techniques described below. Even if a State is not expressly authorized by statute, it may want to develop procedures for issuing some of the more formal orders (e.g., NOV's) as an informal response where violations are minor and compliance is expected. A broad range of enforcement tools is necessary due to the unusually large regulated community and the relatively limited resources available for conducting enforcement.

In traditional, formal enforcement response procedures, the implementing agency typically issues an NOV, followed by an administrative order (with or without a penalty) if the violation is not corrected. The enforcement order usually requires the violator to take actions to correct the violation; it may assess a penalty. In States without

administrative order authority, or for cases in which the order is ignored, judicial orders and penalties must be sought.

Although formal enforcement procedures are necessary at times, they can be resource-intensive. Furthermore, States may lack the staff of attorneys or funds necessary to carry out formal responses in all situations. In view of these concerns, many States have developed informal enforcement mechanisms that are structured so that violations are prevented or minimized to the point that the formal enforcement process is rarely used. Such programs tend to employ informal methods of notifying violators and encouraging compliance. However, in these programs, the threat of more stringent enforcement actions and penalties remains an important factor. Although most officials prefer to use the informal approaches initially, they will exercise more formal responses when violators are not cooperative. Examples of some informal and formal enforcement techniques are discussed below.

Encouraging Voluntary Compliance

The type of enforcement response used by a State often depends upon the cooperation of the violator and the severity of the violation or release. For example, informal enforcement techniques may not be effective or may be inappropriate if there is a release or violation that requires a complicated or extensive remedy, or where the violator is uncooperative. However, several of the States interviewed indicated that unless there is a flagrant violation, they prefer to negotiate informally with the violator to attempt to develop an agreement specifying the actions necessary to achieve compliance. They consider such enforcement responses to be less resource-intensive than more formal responses and to lead to the development of more cooperative relationships with the regulated community.

Informal methods for leveraging violators into compliance include issuing informal notifications, threatening to revoke permits, or providing funding incentives. For situations in which there is a release from an UST system, States have developed procedures for encouraging voluntary

cleanups. Examples of these informal, yet forceful, techniques are described below.

Informal Notifications of Violations

Many States have developed procedures specifically to notify violators and encourage correction of the violations without having to issue more formal orders or levy penalties. These procedures include warning letters, verbal warnings, and even more informal forms of notification. In general, such informal notifications require the owner or operator to correct the situation and bring the facility into compliance. The notification may indicate the potential penalty if the actions are not taken, but generally it does not have the force of law for imposing penalties. If the violator remedies the situation satisfactorily, the State considers the matter resolved.

Interviews with State UST officials indicated that most programs have some informal means of notifying violators of minor violations and encouraging compliance. In Maryland, inspectors write a simple warning letter that informs the owner or operator of the requirements and specifies the actions necessary to bring the UST into compliance. Potential penalties for continued noncompliance are described, but no penalty is levied at that time. For more significant violations, the inspector generally issues official NOVs from the Department of Environment that have the force of law and can impose penalties. Maryland has found that the informal notifications are an effective, practical tool to obtain compliance. State UST staff estimate that only about 10 percent of the violators do not undertake the actions advised by inspectors.

Rhode Island has a similar "letter of noncompliance" that informs the violator of the violations and specifies the actions to be taken. Approximately 60 percent of the letters of noncompliance issued in 1986 required no further actions. If noncompliance continues, the State takes more formal actions.

Texas has developed a notification letter that may be adapted to site-specific situations. This informal letter advises that appropriate response actions be taken and requests technical

information on both the violation and the action that will be taken by the violator to achieve compliance. If the violator responds adequately to the letter, no further action is taken. The UST staff tries to work with cooperative responsible parties to obtain compliance without having to initiate formal action.

Permit Leveraging

Several counties in California use permit requirements as a means of encouraging violators to come into compliance. In California, most enforcement occurs at the local (county or city) level, and compliance is usually achieved through informal negotiations between local officials and their regulated population. If a violator is recalcitrant, the implementing county or city agency can threaten to revoke a permit to encourage compliance.

Some California counties have developed even more innovative means of encouraging compliance. San Mateo County enforces its permit program through the use of adverse credit ratings. If owners or operators in the county fail to pay their permit fee, the bill is sent to the bill collection division of the county government, which can report nonpayment to the national credit bureau. San Diego County, which does not have administrative penalty authority, assesses "investigation fees" when tank owners or operators fail to obtain a required permit. Most of the other counties prefer informal persuasion as a means of obtaining compliance, but they do rely on the authority of the county District Attorney as an incentive for compliance. In general, the State Regional Water Quality Control Boards take action only when negotiations at the local level have failed.

UST programs that encourage participation of local agencies (e.g., fire departments) may be able to employ the enforcement authorities of that agency to assist in encouraging compliance. In Massachusetts, some local fire departments are able to revoke an operating permit (including

locking the pump), while others are authorized to petition the local government to revoke an operating permit. In Baltimore County (Maryland), the enforcement responses are linked to building permits. A tank found to be leaking is considered to have violated the building permit, and the permit is revoked. Without a permit, the tank cannot be operated and must be pumped out until a replacement permit is obtained, which can only occur after corrective action has been taken.

Funding Incentives

One method of encouraging compliance is to provide incentives. Minnesota has adopted a "carrot and stick" approach to encourage voluntary cleanup response without the use of formal enforcement. Minnesota encourages responsible parties (RPs) to get involved in investigating releases and designing cleanups. To provide RPs with an incentive (the "carrot"), the State has a trust fund that awards reimbursement to RPs who are in compliance with the regulations when a release is discovered, as long as they cooperate with the State in achieving an agreed-upon level of cleanup. The "stick" is an aggressive State cleanup and cost-recovery program supplemented by penalties for unresponsive owners and operators of leaking USTs. (See Exhibit II-4.) Florida has implemented a similar program that provides amnesty from cleanup costs as long as the owners or operators have complied with certain requirements and have been cooperative.

In addition to cost-recovery programs that provide reimbursement or amnesty to cooperative owners or operators, some States provide no-cost oversight of corrective action if the RP provides notice of the release and cooperates in the cleanup. In general, RPs who admit responsibility for violations can not only be provided assistance in obtaining compliance, but also spared a penalty.

Rhode Island has developed an innovative funding program available to tank owners or

November 2, 1987

Contents of
Petroleum Tank Release
Investigation Report

Federal and State laws require persons responsible for a release of petroleum from a tank to conduct corrective actions adequate to "minimize, eliminate, or clean up a release to protect the public health and welfare or the environment".

A remedial investigation must yield sufficient information to select and design an adequate corrective action. The corrective action must not only deal with current pollution, but must also protect against future on and off site problems. This document describes the information that must be contained in a remedial investigative report and corrective action proposal.

The hazards which must be addressed include:

- fire and explosion from product and product vapor;
- contamination of drinking water;
- contamination of soil, ground water or surface water.

Investigating and correcting a release of petroleum from a tank can be simple and straightforward or extremely complex depending upon the site and its soil and ground water conditions, the amount and type of product released, and the current and future uses of the site and neighboring area. These site specific conditions make it impossible for the Minnesota Pollution Control Agency (MPCA) to specify a definite number of test borings or a certain type of water analysis to be done in all cases. Rather, this document lists the conditions and items of information that an investigation must address in order to determine corrective action which assures protection of the public's health and safety and the environment. Presented below are outlines of "Parts I, II, and III" of an investigation report. Reports must contain this or equivalent information to be considered acceptable to the MPCA staff. If some of the required information cannot be found you should include a statement to that effect in the report. If you believe that some of the information is not relevant to your site you should say so and describe why it is not relevant.

Part I of the report (Background Information) must contain descriptions of the site, the area around the release site, the product and the tanks. Much or all of this information can be gathered by responsible persons. The information should be as detailed as possible and may be submitted separately from and before, Parts II and III.

Part II of the report (Technical Data and Conclusions) must contain detailed descriptions of soil, water, and chemical conditions at the release site. Few responsible persons will have sufficient expertise and experience to gather and interpret this information. Certain parts must be done by a certified or registered person (for example, monitoring wells must be constructed according to the State well code by licensed well drillers or registered civil or geologic engineers).

operators for correcting situations in which the UST poses a danger to human health and the environment. The UST Loan Fund provides the owner or operator with a low interest loan to be used for repair, replacement, or removal of leaking UST systems. A condition of the loan is that the applicant be in compliance with the regulations; any owner or operator cited as a violator is ineligible to receive funds. Several other States have proposed or established grant or loan funds to assist owners and operators in upgrading or replacing UST systems. (See Exhibit II-5.)

Negotiated Cleanup Settlements

Several States have developed procedures for negotiating settlements with RPs in cases of tank releases. Through these settlements, the State can encourage the RP to undertake corrective actions without having to use formal enforcement responses. Because UST releases do not necessarily occur because of a violation, these settlements are used when the RP appears to have made a good faith effort to cooperate and was in compliance when the release occurred.

In Texas, if the RP does not respond to the initial notification, or responds inadequately, the Texas UST staff initiates negotiations to reach an agreement specifying actions to be taken. A letter of agreement may suffice as confirmation or, for complex cases, the more formal Agreed Enforcement Order (AEO) may be developed. The AEO is prepared by the Legal Division of the Texas Water Commission and must be approved by the Commission before it is effective. If the Commission staff fails to reach an agreement with the RP after taking these steps, it will initiate formal enforcement proceedings.

New Mexico initiates negotiations for all sites requiring corrective actions, regardless of priority. (See page 90 for a more detailed discussion on the LUST priority rating system.) For lower priority cases that do not pose an immediate or substantial threat to human health and the environment, the State attempts to achieve compliance with a minimum expenditure of State resources. Compliance is negotiated informally with input

from the owner or operator. Although the State may cite potential legal recourse, such actions are generally not taken, and few formal settlements are negotiated for low priority cases. For cases that pose a more significant threat to human health and the environment, the State can initiate more formal negotiations with the violator or RP. The purpose of the negotiations is to sign a settlement agreement, which is a legally binding document in which the violator or RP agrees to take action to clean up the site to State standards. In general, New Mexico will waive any penalties upon approval of the corrective action outlined in the agreement.

In Rhode Island, contamination or violations may be discovered during the tank closure inspections. If the contamination or violation is extensive, the State and owner or operator enter into a consent agreement that specifies the actions necessary to correct the situation. There is usually no penalty associated with this agreement as long as the actions are taken within the specified time period. If the agreement is violated, formal response procedures are initiated.

Taking Formal Enforcement Actions

As mentioned earlier, informal actions are usually effective, and formal actions are used only if the violation is significant or if the violator is uncooperative. All seven of the States interviewed used formal enforcement actions under certain conditions. In very serious cases or when the violator is a repeat offender, the States are likely to omit informal responses and respond directly with formal actions. However, even formal enforcement actions can be divided into innovative or expedited procedures and traditional enforcement response.

Expedited Enforcement Procedures

For a violation that requires a formal enforcement response but for which a traditional approach is inappropriate or too resource-intensive, States may consider developing expedited procedures such as field citations and other enforcement mechanisms that can be administered on site.

State/Fund Title	Eligibility	Revenue Source	Interest Rate
California	Small businesses unable to obtain loans from private lending sources.	1) State appropriations	Equal to the cost of money to the State on the first day of the calendar quarter during which the loan is approved.
California Petroleum Underground Storage Tank Financing Authority (PROPOSED)	The amount of a loan may not exceed \$70,000. Loans may be used to upgrade or replace USTs.	2) Application fees 3) Interest on outstanding loans 4) Federal appropriations 5) Interest income from the fund	
Iowa			
Petroleum Underground Storage Tank Financing Account (PROPOSED)	Provide loans to financially qualified small businesses to repair, upgrade, or replace UST to meet applicable State or Federal standards. The maximum amount of a loan may not exceed \$50,000.	1) Petroleum tank fees 2) Interest received on outstanding loans 3) State and Federal grants	Equal to the cost of borrowing money by the State on the first day of the calendar quarter during which the loan is approved
Maine			
Underground Storage Facility Replacement Fund	Money in the fund may be used for direct loans for all or part of underground oil storage facility replacement projects according to criteria set by the State. Also provide funds for insuring mortgage payments for UST loans. The mortgage insurance is limited to \$5 million	1) State appropriations 2) Interest income on the fund 3) Repayments	To be determined
New Jersey			
State Underground Storage Tank Improvement Fund	Revolving fund; low interest loans made to UST owners who have been directed by the NJDEP to repair or replace one or more of their USTs or install monitoring systems.	1) State appropriation of \$5 million 2) Repayment of loans	Not more than six percent; fixed rates.
New York			
State Underground Petroleum Storage Facility Improvement Fund (PROPOSED)	Loans made to owners of facilities who are required pursuant to law or regulation to replace one or more underground storage tank facilities.	1) State appropriation of \$5 million 2) Interest from outstanding loans	An annual rate equal to the Federal discount rate.
Rhode Island			
Underground Storage Tank Replacement Revolving Loan Fund	Low interest loans to residential and commercial owners of USTs to remedy leaking tanks and replace tanks that are likely to leak; revolving fund.	1) State appropriations 2) Repayment of loans 3) Federal grants 4) Gifts, bequests, donations 5) Bond issues	Two points below the six month Treasury Bill rate at the time the loan is awarded; fixed rates.
Vermont			
Underground Storage Tank Incentive Program	Grants up to \$5,000 for small retail gasoline outlets (sales <20,000 gallons/month) and municipalities (pop. <2,500) to aid in compliance with State regulations.	1) Funds authorized by the oil overcharge fund and from the petroleum cleanup fund for this purpose	N/A

Field Citations. In general, field citations (much like traffic tickets) are modified administrative orders that are often used for minor violations and are issued by the inspector at the time a violation is discovered. The citation typically assesses a low to moderate penalty and requires the violator to correct the violation to bring the facility into compliance. Although they are usually addressed to relatively minor, commonly occurring violations where the violator is likely to correct the violation and forego appeal, field citations can be a larger component of the formal enforcement arsenal. (See page 94 for further discussion of expedited enforcement procedures.)

The Ontario, Canada, UST program has used field citations for several years to enforce all of its UST regulations, including major provisions. (See Exhibit II-6.) The District of Columbia is planning to use field citations as the initial enforcement order for all of its UST regulations under its generic civil enforcement procedures. In both programs, the violator has the option of correcting the violation and paying the fine assessed on the field citation, or pursuing an appeal following the procedure outlined on the citation.

Of the seven States interviewed, only California uses field citations to any degree. Although most counties or localities in California do not have administrative authority to write field citations, those that do reported favorably on them. The authority allows the county or local agency to cite owners for minor infractions and thus requires less documentation for violations. The South County Fire Authority issues citations that require a court appearance. If a fine is imposed, the Municipal Court collects the fees according to an approved schedule, similar to the manner in which parking violations are handled. However, some officials in counties without this authority indicated that they would not want it because it would damage their cooperative relationship with the tank owners and operators. This procedure would normally be the same as that followed for appeals of traditional administrative orders.

Cease-and-Desist Orders. Assuming that a State has the necessary statutory authority, as an alternative to the traditional administrative orders, a State may take other, more efficient and equally effective action by ordering violators to cease operation of their tanks. For more significant violations, States may revoke the permit (if a permit is required to operate a facility) or issue orders requiring that tanks be pumped until empty or closed, if necessary. In Maryland, inspectors issue site complaints to prohibit violators from operating their USTs or installing a new UST. These complaints are essentially cease-and-desist orders that do not levy penalties. (See Exhibit II-7.) Maryland inspectors have also ordered tanks to be pumped out until a suspected leak is confirmed or corrected. In California, county agencies can revoke the permit if a violator has not responded to informal enforcement; the agency can also require that the tank be removed from the ground.

The City of Austin, Texas, has developed an innovative approach to exercising a cease-and-desist order for violators that is a combination of informal and formal steps. Under the City's building code, new USTs being installed must obtain a building permit and follow proper installation procedures. If the installation requirements are violated, the inspector gives the violator a verbal 24-hour compliance deadline. If the violation is not corrected, the inspector gives a written notice. If compliance is still not achieved, the inspector posts a "red tag" on the tank that orders the violator to stop all work until the violation is corrected. This tag also serves as a warning to distributors that the UST system does not meet specifications and should not be filled. (See page 122 for a discussion of pump tagging.)

The advantage of these less formal procedures is that they allow for tailored on-site settlement of the violation without requiring extensive administrative resources. The field-citation type of notice in particular provides the inspector with flexibility to determine the appropriate response in each situation. The disadvantage of field citations is that some authorities view them as having the potential to adversely affect the relationship between inspectors and the regulated population;

Form 102
The Provincial
Offences Act

Formulaire numero 102
Loi sur les
infractions provinciales

PROVINCIAL
OFFENCES COURT
PROVINCE OF ONTARIO

COUR DES
INFRACTIONS
PROVINCIALES

OFFENCE NOTICE AVIS D'INFRACTION

A 109314-2

YOU ARE CHARGED WITH THE FOLLOWING OFFENCE
VOUS ÊTES ACCUSÉ DE L'INFRACTION SUIVANTE

On the day of 19 Time
Le jour de 19 à (heures)

M

NAME
NOM

ADDRESS
ADRESSE

DRIVER'S LICENSE NO		PERMIS DE CONDUIRE NUMERO		CLASS		CODE	
				CATEGORIES		RESTRICTIONS	
SEX	DATE OF BIRTH	DATE OF RESIDENCE	PROVINCE	PROVINCE	PROVINCE	PROVINCE	PROVINCE
MALE	DAY MONTH YEAR	DAY MONTH YEAR	PROVINCE	PROVINCE	PROVINCE	PROVINCE	PROVINCE

AT
A (indiquez l'endroit)

DID COMMIT THE OFFENCE OF
VOUS AVEZ COMMIS L'INFRACTION
DÉCRITE CI-DESSOUS

CONTRARY TO
À L'ENCONTRE
DES DISPOSITIONS

SECTION
DE L'ARTICLE

NOTICE
WITHIN 15 DAYS OF RECEIVING THIS OFFENCE
NOTICE YOU MAY CHOOSE ONE OF THE
OPTIONS ON THE BACK OF THIS FORM IF YOU
DO NOTHING A CONVICTION WILL BE ENTERED
AGAINST YOU AND FINE PAYMENT ENFORCE-
MENT WILL FOLLOW

AVIS
DANS LES QUINZE JOURS DE LA DATE À
LAQUELLE VOUS RECEVREZ CET AVIS VOUS
POUVEZ EXERCER L'UN DES CHOIX QUI SONT
INDIQUÉS AU VERSO DE CE FORMULAIRE SI
VOUS NE FAITES RIEN VOUS SEREZ DÉCLARÉ
COUPABLE ET LE PAIEMENT DE L'AMENDE
DEVIENT EXÉCUTOIRE

OFFICER NO AGENT DE POLICE NO	UNIT BOULEVARD
----------------------------------	-------------------

IF YOU PLEAD NOT GUILTY THE TRIAL SHALL BE HELD AT
SI VOUS PLAIDEZ NON COUPABLE, LE PROCÈS SE TIENDRA À

Provincial Offences Court/Cour des infractions provinciales
Judicial District of York/District judiciaire de York

OLD CITY HALL, 60 QUEEN ST. W.
TORONTO, ONTARIO M5H 2M4

SET FINE including costs
AMENDE ET FRAIS

\$

IF YOU WISH TO PAY THE SET FINE SHOWN SIGN THE PLEA
OF GUILTY ON THE BACK AND FORWARD YOUR PAYMENT
AND THIS NOTICE TO THE ADDRESS OF THE COURT SHOWN
ON THE BACK OF THIS NOTICE
SI VOUS DESIREZ ACQUITTER L'AMENDE INDICÉE ICI
SIGNEZ LE PLAIDOYER DE CULPABILITÉ QUI APPARAÎT AU
VERSO ET FAITES PARVENIR LE PAIEMENT DE L'AMENDE
ACCOMPAGNÉ DE CET AVIS AU TRIBUNAL DESIGNÉ AU
VERSO

PROVINCIAL OFFENCES OFFICERS
ARE NOT ALLOWED TO ACCEPT
PAYMENT OR DOCUMENTS FOR
DELIVERY TO COURT
LES AGENTS D'INFRACTIONS PROVINCIALES
NE SONT PAS AUTORISÉS
À ACCEPTER LA REMISE D'UN PAIEMENT
OU DE DOCUMENTS POUR LES
REMETTRE AU TRIBUNAL

SIGNATURE OF PROVINCIAL OFFENCES OFFICER SIGNATURE DE L'AGENT D'INFRACTIONS PROVINCIALES			
DATE OF NOTICE DATE DE L'AVIS			
Day	Month	Year	
Day	Month	Year	



STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
WASTE MANAGEMENT ADMINISTRATION
ANNAPOLIS, MARYLAND 21401
(301) 974-3551

SITE COMPLAINT

NUMBER	DATE
SC-OV- 000479	

1. Principal: _____
(Address): _____ (PHONE) _____
2. Agent or Contractor: _____
(Address): _____ (PHONE) _____
3. Violation of ☐ Environment Article, Section 4-401 through 418
☐ Code of Maryland Regulations Section(s) Violated _____
4. Specifically: _____

5. Accordingly it is "ORDERED" that _____
☐ Cease and desist by _____ hrs. _____ 19 _____
☐ Other: _____

Please be advised that you are entitled to a hearing before the Administration as a result of this Order. If you wish to schedule a Hearing on this matter, the Administration must be so notified in writing within (10) days.

6. "I hereby acknowledge receipt of this Site Complaint by my Signature, which is not an admission of guilt."

Person issued to: _____
AUTHORIZED BY RONALD NELSON ISSUED BY: _____
Director Inspector

☐ Addendum Attached

DENV 50 White - Oil Control Division Yellow - File Pink - Principal

their reasoning is that if the inspector normally encourages compliance by maintaining an informal, friendly relationship with the facility owners, use of field citations may make relations more inflexible and antagonistic, thus creating hostility within the regulated community. However, other jurisdictions view the authority to quickly issue some formal enforcement action as a necessary "hammer" to their role as regulators.

Traditional Formal Enforcement

All of the States interviewed indicated that certain violation situations require that formal enforcement orders be issued by the implementing agency. Maryland uses administrative compliance orders and judicial orders to achieve compliance when informal negotiations fail or when the violation is significant. Such orders are used to require actions and/or assess penalties and provide the right to a departmental hearing. Self-identified violators can reduce the amount of the penalty by pre-paying the fine. Higher penalties can occur if the case is taken to court and substantially higher costs of cleanup can be assessed against the violator.

In most enforcement cases in New Mexico, violators are cooperative and the State works with them to develop an appropriate solution. However, for those sites where violators are uncooperative or the environmental or human health threat is particularly severe, an administrative order is issued. The UST program has the authority to impose penalties and require violators to correct the situation. If the violator fails to cooperate, judicial action is required to order the necessary response.

In Texas, formal enforcement actions are taken when the violator does not adequately respond to the informal negotiations. Formal enforcement actions must follow the procedures established under the Texas Administrative Code. For each case, the Texas UST staff prepares a report that outlines the facts in the case and includes recommendations for corrective actions and administrative penalties. This report is reviewed

by the UST legal staff, signed by the director, and sent to the violator. The violator may either consent to the report or request a hearing. If, upon review of the hearing, the Texas Water Commission determines that a violation has occurred, it may assess penalties and/or order actions to achieve compliance.

When county-level negotiations for settlement fail in California, the counties generally have two choices. They can take the case to the local District Attorney for prosecution or to the Regional Water Quality Control Board for formal enforcement actions. (See page 126 for a description of the case transfer process.) The Board typically issues a cleanup and abatement order that requires information on the release and an evaluation of actions taken. After the Board has selected a cleanup level, an order requiring complete remediation is issued. Noncompliance with these orders results in administrative fines.

Cost Recovery

Several States have developed formal procedures for recovering costs from RPs for corrective actions following a tank release. In Minnesota, if RPs cannot be located or are unwilling to cooperate, the State takes corrective actions and follows up with cost-recovery steps. Any corrective actions or cost-recovery orders must be approved by the Citizens' Board, a Governor-appointed group of nine citizens who present various interests. Approved cost-recovery orders are issued by the Attorney General.

When a release is discovered in Massachusetts, the State issues a formal Notice of Responsibility which informs the RP of liability for the cost of corrective actions. If the RP does not respond, the State takes corrective action and bills him for the costs incurred. If the RPs cannot or will not pay, a lien may be placed on the property, which increases the administrative cost liability. State officials can require that notification of the release be indicated on the property deed, informing potential buyers of their potential liability for future damages and limiting the use that can be made of the property.

Penalty Determination

When States use their formal enforcement authorities, they typically want the flexibility to assess penalties at levels appropriate to the violation and situation. To determine appropriate penalties, some States use a penalty matrix to provide a system for matching the penalty with the violation. In Rhode Island, NOV penalties are assessed according to the State's penalty matrix, which categorizes specific violations into classes. For example, failure to register tanks is a lesser violation than the failure to report a leak. While a penalty matrix is a common element of an enforcement program, a State might discount penalties specified in the matrix to negotiate compliance with violators. Past penalty assessments in Rhode Island have been decreased by 50 percent in some cases in order to encourage the violator to achieve compliance. New Mexico has a penalty matrix that assigns values to such factors as the type of violation, the threat to ground water or water supply, and the violator's willingness to cooperate or history of non-compliance. (See page 138 for more information on the penalty policy.) Values are totalled to determine the final penalty.

DELEGATING PROGRAM RESPONSIBILITIES TO COUNTIES/CITIES

Because its resources for enforcement are likely to be limited, a State may want to consider delegating some of its UST compliance monitoring and enforcement activities to local governments. In addition, the size and diversity of the regulated community can make it difficult for a centralized program, particularly in a large State, to implement a comprehensive compliance program. Delegating certain compliance monitoring and enforcement responsibilities to local agencies can alleviate difficulties.

The advantage of delegating responsibilities is that local officials often have a more comprehensive and intimate knowledge of the regulated community, which allows them to work with owners or operators in a less formal, and often

more effective, manner than State officials. The disadvantage is that delegating enforcement activities gives a State less control over the actual program implementation, which can make directing the overall UST program more difficult. Therefore, effective delegation may require a system of oversight procedures that provides the State with the information necessary to evaluate the performance of the local agencies and to establish program objectives and priorities.

Of the seven States visited, most have informally delegated some enforcement responsibilities to local officials. In Maryland and Minnesota, local fire departments enforce building and fire codes regulating USTs; however, there is neither a formal agreement with the State to develop enforcement programs nor a system for direct State oversight of enforcement activities. Massachusetts delegates its regulatory program (e.g., inspections, permits) to the local fire departments through the State Fire Marshal's Office. Although local officials are responsible for enforcing State UST regulations, the State Fire Marshal provides oversight through technical guidance, such as providing protocols for inspecting monitoring systems.

Two States (California and New Mexico) have formally delegated UST enforcement programs to localities. California has completely delegated UST program development and enforcement to cities or counties, while New Mexico has done so with Albuquerque, one of its major cities. The delegation of program authority in California and New Mexico is detailed below.

Delegation in California

The California State Underground Storage of Hazardous Substance Law (Chapter 6-7, Division 20 of the California Health and Safety Code) delegates the UST prevention and cleanup activities to the counties. Unlike the Federal UST program in which States are encouraged to adopt UST programs, counties are required to implement the State program and can be sanctioned for not doing so (possibly by the withholding of State funds for other programs). Cities can pass their own ordinances and have the

option of running UST programs in lieu of the counties. The California State Water Resources Control Board issues and revises regulations and provides guidance to the localities. The State has nine regional offices, known as Regional Water Quality Control Boards, that provide oversight and assistance to the counties and cities.

Several factors make this approach appropriate and effective in California. The size of the State, combined with the large population of tanks, would make running a centralized program extremely difficult. The California regulatory enforcement program, which is based on an extensive permitting process, requires the direct attention of program officials to guide owners and operators through the permit requirements. Having the program run by local officials facilitates this process. In addition, California has a strong county government system that has experience in implementing other State programs.

The California State law allows the county or city implementing the UST program to assess civil penalties for violations. Most programs use their local district attorneys to assess penalties under this law. The civil penalties range from \$500 to \$5000 per day. Criminal sanctions can be sought for owners and operators who either knowingly fail to report an unauthorized release or who falsify

monitoring requirements. Counties are allowed to use legal remedies and penalties under other laws as well as the State law.

Delegation in New Mexico

New Mexico used a Memorandum of Understanding (MOU) to delegate certain UST program responsibilities to the City of Albuquerque. The MOU allows the Albuquerque Environmental Health Department (AEHD) to perform functions under the authority of the State Hazardous Waste Act. These functions include the location and investigation of UST sites within Bernalillo County where leaks may have occurred, particularly at locations where there are abandoned tanks and where the depth of ground water is shallow. The responsibilities of AEHD include characterizing the presence, type, and extent of ground-water contamination and assessing the threat to public health posed by contamination of wells and fire hazards.

The MOU also specifies that all enforcement actions must be taken by the State. The City of Albuquerque does not have the authority to prosecute, litigate, or take any enforcement action under the MOU. Thus, the MOU gives the City authority to undertake compliance monitoring activities, but not formal enforcement response actions. (See page 147 for a sample MOU.)

CHAPTER III.

MEASURING PROGRAM EFFECTIVENESS

This chapter examines methods that your agency might use to measure the success of its UST compliance program. Measuring program success allows program officials to determine what is working and what is not and to make informed management decisions. Setting program goals and measuring progress toward meeting those goals can assure you that you are spending your resources as efficiently as possible.

Generally speaking, there are two ways of measuring program effectiveness: measuring the actions taken by the program, and measuring the behavior of the regulated community. Each is discussed below.

MEASURING PROGRAM ACTIONS

The success of your agency's UST program can be measured by tracking the number or frequency of compliance-related actions taken. For example, you can track the number of inspections conducted, outreach materials distributed, or warning letters, field citations, or administrative orders issued. The UST program in Suffolk County, New York, measures the success of program compliance not by tracking enforcement actions taken, but by tracking the frequency of reported UST installations, notifications, tightness tests, and closures. The data are entered into a data base and are used to calculate compliance with the respective requirements. Although compliance measurements may be overestimated due to lack of data on unregistered tanks, the county is aware of certain categories of USTs that have low registration levels and is working to correct this.

The advantage of this system is that it is straightforward (i.e., the types of activities that can be counted are easy to identify). In addition, your agency can establish clear goals for achieving compliance and can easily track progress in meeting those goals. Because of this simplicity, many enforcement program officials rely on these types of

measures to evaluate the performance of their UST program.

However, this method has several disadvantages. First, counting enforcement activities reveals what the program is doing, but it might not indicate whether or not the program is achieving its goal (i.e., promoting compliance in the regulated community). At best, these activities are substitutes for the more basic program goal of achieving compliance with the regulations and protecting human health and the environment. In addition, the number of actions taken by a program may or may not correlate with the number of owners or operators in compliance. For example, a large number of random inspections or field citations may do little to deter noncompliance if few members of the regulated community know about the regulations or how to comply. In this case, measuring the number of inspections conducted or field citations issued would reveal little about the success of the program.

Another potential disadvantage of this method is that it may create incentives that distort the enforcement process. Suppose that your program sets goals for the number of field citations to be issued during a certain time period and that field staff are rewarded for meeting this goal. This arrangement gives field staff an incentive to detect and sanction minor, but conspicuous, violations to meet the goal, but it may divert attention from identifying major problems and preventing future violations.

By being aware of the limitations of using the number of program actions taken as measures to judge program success, you can structure the measures to maximize their usefulness. In particular, measures that are tailored to a particular stage of a program's development can yield data on the activities that are most important during that stage. For example, new programs might measure activities like outreach materials produced, as opposed to administrative or judicial orders issued. By carefully choosing program activity measures,

you can enhance their usefulness as a program management tool.

MEASURING THE BEHAVIOR OF THE REGULATED COMMUNITY

The second method of measuring program success is to monitor the behavior of the regulated community. Ideally, a compliance program should measure the level and rate of change of the regulated community's compliance with the UST regulations. This type of measure directly tracks the program's progress in promoting compliance. However, the large and diverse set of regulations and the diversity and size of the regulated community can make measuring compliance difficult and expensive.

Your program may, however, concentrate on measuring the compliance of the regulated community with specific parts of the regulations or on certain related regulated community behavior, such as:

- The portion of tanks with reported tank test results or insurance,
- The number of existing tanks not replaced or upgraded,
- The rate of tank replacement or upgrading,
- The number of releases reported or detected, or
- The number of tank owners with liability insurance.

As in the case of measuring success by tracking program actions, the appropriate measures for a program depend upon the stage of the program's development. For example, the major focus in many new programs may include ensuring that tanks are identified, tested for tightness, and properly

upgraded, and that any releases are swiftly and completely corrected. The success of these goals may be measured primarily in terms of how well the regulated community has complied with these requirements. A mature program, on the other hand, may focus more on measuring compliance with requirements to maintain and use leak detection and prevention technologies.

Interviews with State and county officials provide several examples of how this technique can be used. The Minnesota Pollution Control Agency (MPCA) UST program currently measures compliance of the regulated community with corrective action requirements. The program, created in 1985 and still in its early stages, is devoting most of its resources to responding to leak reports and enforcing corrective action requirements. The MPCA has observed approximately 85 to 90 percent compliance with these requirements.

The Dade County, Florida, UST program measures compliance with corrective action requirements through enforcement and oversight. In Dade County, compliance is also measured with registration requirements by comparing UST notification forms to maps, information supplied by local authorities, and on-site inspection data. However, these measures may be overestimated due to a lack of data on unregistered USTs. New Mexico has measured compliance with notification requirements through on-site inspections in the City of Albuquerque. As their programs develop, Minnesota, New Mexico, and Dade County plan to increase the resources devoted to measuring compliance, and would like to use inspections to measure compliance with installation, closure, recordkeeping, leak detection, and financial responsibility requirements.

CHAPTER IV.

SUMMARIES OF UST COMPLIANCE PROGRAMS IN SEVEN STATES

This chapter briefly describes the UST programs in each of the seven States interviewed: California, Maryland, Massachusetts, Minnesota, New Mexico, Rhode Island, and Texas. Although the programs established in these seven States do not present all possible approaches to developing an UST compliance program, they do illustrate the diversity of programs that may be established. As a whole, the States represent a number of factors, including population size, maturity of the UST program, degree of local government involvement, type of legislative authority used, and techniques used for achieving compliance. This chapter summarizes the seven programs; the complete reports on each State are contained in a separate document. For purposes of quick review, a matrix of UST compliance programs by State is included at the end of this chapter. (See Exhibit IV-1.)

CALIFORNIA

California's 1983 State Underground Storage of Hazardous Substances Law established the State's regulatory authority and described the protocol for delegating the enforcement authority to local agencies. The law directed the California State Water Resources Control Board to develop specific guidelines for the design, construction, installation, inspection, monitoring, and closure of both new and existing USTs. These tank standards became effective in 1985 and included requirements for secondary containment, cathodic protection, strike plates, and a leak detection system. The UST statute also required that counties implement and enforce the technical requirements of the UST program, although cities may choose to develop their own programs and override county authority within the city limits.

Two factors were important in the California decision to require counties to implement the UST program. First, the size of the State and the size of the regulated community would have made it difficult for the State to assume program

responsibility. The California regulations require the implementing agency to work closely with the regulated community, which may be most effectively accomplished by the local governments. Second, county governments in California have a tradition of running State programs. Several State programs, including the hazardous waste regulatory program, are run by counties. Thus, the counties have had experience with the State's environmental regulatory programs.

Counties and cities implement the regulations through a permitting process. To obtain a permit, the owner or operator must first submit an application to the local agency providing extensive information about the facility, and specifying one of eight methods to be used to monitor product inventory. Owners or operators are usually required to submit a permit fee with the application and to have a tightness test performed prior to receiving a permit. Tank permit fees vary by county. After the owner or operator has submitted the application and permit fee, most counties then require that the facility be inspected to determine whether it meets the standards set by State and/or local regulations. If the UST passes the inspection, a 5-year permit is issued. Outreach efforts of the localities typically focus on informing owners and operators of the permit requirements. Most counties undertook an extensive mailing; counties generally located their USTs through inventory information gathered by the State and supplemented this information with local fire department records.

The State also requires that UST owners or operators report unauthorized releases from either the primary or secondary containment unit to the local implementing agency within 24 hours of detection. A written report must then be submitted within 5 days. Until the cleanup is completed, the operator or permittee must submit a report to the local agency or regional board of the State every 3 months specifying the progress of cleanup activities.

If owners or operators fail to comply with the permit requirements or other regulations, the counties and cities attempt to use informal enforcement techniques, such as letters and phone calls, to get the owners or operators to comply. None of the counties interviewed had administrative authority to impose fines on owners or operators who operate a tank without a permit or violate the regulations in some other manner. If informal methods fail, the counties can assess civil penalties under the State law through their local District Attorney's Office.

MARYLAND

The UST program in Maryland is part of a comprehensive program for oil pollution control and spill response. The UST compliance program is currently administered at the State level by the Oil Control Division in the Department of Environment. However, some Maryland counties have their own UST regulations or enforce building and fire codes regulating USTs. County programs tend to focus on permits and inspections of tank installations.

The UST program in Maryland grew out of a broader oil pollution control program that has been in existence since 1973. Maryland's shoreline forms a large part of the Chesapeake Bay, one of the largest estuaries in the country and an important natural resource. Because Maryland relies on the Bay, particularly for the State's substantial fishing industry, it developed a program to prevent surface-water and ground-water pollution from oil spills and releases. The oil pollution control and spill response program was administered by the Department of Natural Resources and focused primarily on responding to oil spill emergencies. However, releases of petroleum from USTs were also covered in the program.

In response to increased reports of leaks from UST systems, the program was substantially expanded in 1985 with the promulgation of regulations specific to UST facilities. These regulations included mandatory tightness testing for all USTs 15 years or older (or where age is unknown) and technical standards for UST installation and closure. The strength of the UST program was

expanded further in July 1987, when authority for the program was moved to the newly established Department of Environment. This reorganization served to provide the UST enforcement program with wider access to statutory authority for water pollution control.

The UST program in Maryland is currently response-oriented and does not have written procedures for site inspections and enforcement of the regulations. Inspectors are assigned to one of seven regions in the State and devote most of their time to investigating complaints and enforcing against violations. Only in the less populated regions do inspectors have more time to conduct routine inspections or "spot checks" to assess the compliance status of facilities.

The inspectors have developed both formal and informal methods for responding to violations, depending upon the type of violation and the reaction of the violator. Most enforcement actions are informal (i.e., the inspector works with the violator to explain the necessary corrective measures and the potential penalties for noncompliance). In cases of continuing noncompliance, a formal administrative order may be issued by the Department of Environment to order actions and/or assess penalties. In extreme cases, the Department may request the Attorney General's Office to seek a judicial order.

To encourage voluntary compliance, the program utilizes several means of notifying the regulated community of its responsibilities. For example, the State has developed public notice fliers that describe the regulatory requirements for tank testing and provide sources for further information. The State also relies on an Ad Hoc Committee, made up of members from the local government, industry, and community groups, to relay information to petroleum industry representatives and trade associations.

The State is planning to expand its UST program to focus on prevention of violations and releases from USTs. Future activities in the UST program include developing a methodology for targeting random inspections, creating a data base for tracking inspections and other enforcement

activities, and producing written procedures for exercising enforcement authorities.

MASSACHUSETTS

The UST activities in Massachusetts are separated into two programs: a prevention program coordinated by the State Fire Marshal's Office; and a release-response program established by the State Department of Environmental Quality Engineering (DEQE). The release-response authority stems from the State's Superfund program, which governs response actions for releases and/or unauthorized disposal of oil or hazardous material. However, the authority for developing regulations specific to USTs and for establishing broad technical and reporting requirements was delegated to the Office of the State Fire Marshal.

Before Massachusetts developed a specific UST program, the State's water pollution control authorities, which were administered by DEQE, were used to address all remedial response actions. However, the pollution laws at that time did not permit State response until a responsible party was identified. As a result, tank owners and operators often abandoned contaminated sites. The resulting site contamination problems and the subsequent contamination of ground water were the primary forces behind support for more legislation. In 1983, the State passed the Massachusetts Oil and Hazardous Material Release Prevention and Response Act. This statute, which constitutes a State counterpart to the Federal Superfund program, provided funding for site assessment and remediation, and it expanded DEQE's enforcement authority. The State is now developing the Massachusetts Contingency Plan to formalize and detail the responsibilities of those involved in the release-response process and to establish specific procedures required for responding to threats of releases of oil and hazardous materials.

Currently, the majority of DEQE's response actions involve follow-up inspections and oversight of cleanups in response to releases. Under the State's Superfund program, DEQE must be notified immediately of a release or threat of release of oil or hazardous substance. DEQE officials then inspect

the site and determine the necessary corrective action. A Notice of Responsibility (NOR) is issued to inform responsible parties of their liability, regardless of fault, for the cost of all response actions. In addition, the NOR serves to notify the recalcitrant responsible parties that DEQE will hire contractors and then recover those costs plus administrative costs and damages in court.

A different set of authorities were passed subsequent to the State's Superfund Act to address the prevention aspects of UST regulation. In 1986, the State Board of Fire Prevention passed regulations pertaining to UST installation, use, and closure. As the primary State agency responsible for public health and safety issues, the State Fire Marshal's Office in the Department of Public Safety was given administrative authority for the regulations.

The Fire Marshal's regulations are enforced by local fire department officials. Under the regulations, all UST facilities are required to maintain a permit for UST operation and obtain a closure permit prior to UST removal; therefore, local fire officials may inspect installation and closure activities to ensure compliance with the regulations. Some localities have developed more stringent regulations, including requirements for double-walled tanks. Local fire officials may issue an order requiring an owner or operator to take specific action, such as filing for a permit or removing out-of-service USTs. Failure to take appropriate action can result in court action, and civil penalties may be assessed at that time. Compliance outreach has been achieved primarily through mass mailings by State and local officials.

MINNESOTA

Minnesota's UST program is primarily response-oriented and encourages the prompt cleanup of releases through negotiation with the responsible party. The program is administered by the Minnesota Pollution Control Agency (MPCA) and was significantly expanded through legislation passed in 1985 and 1987. The legislature granted the MPCA the authority to develop and enforce a broad range of regulations, including the establishment of a cost-recovery program. The development of

specific technical regulations, however, is awaiting the promulgation of the final Federal UST regulations.

A major factor contributing to the development of the current program is the attention given in the last 5 years to the high number of UST releases. UST releases are of great concern in Minnesota because of their impact on ground water, the State's primary water resource. At present, the UST program focuses on identifying potential releases and ensuring that corrective action is taken where appropriate and necessary.

Because of limited resources, State UST officials do not routinely inspect UST installation or closure sites, although local fire marshals or building inspectors may occasionally oversee UST activities in their area. Instead, the majority of the MPCA's activities are release-response efforts. An important element of this response effort is the newly created Petro Fund, a reimbursement program that has a strong enforcement component coupled with financial incentives for compliance. The strength of the program relies on the cleanup efforts made by the responsible party and the reimbursement funds from the Petro Fund program. The Petro Fund may provide up to 75 percent of the cleanup costs depending on the level of cooperation of the responsible party.

Upon notification of a release, local fire officials usually investigate the release site and mitigate any immediate fire hazards. If severe contamination is discovered, the MPCA sends field staff for further investigation. Once the site has been assessed, the MPCA attempts to notify the responsible party of the corrective action necessary to clean up the contaminated site. If the responsible party agrees to act, the MPCA provides guidance and periodic checks as necessary. Once cleanup actions are complete, the Petro Board, with members appointed by the governor, reviews cost reports and determines the portion of the costs incurred by the responsible party that qualify for reimbursement. Because State funds are available for partial repayment, the responsible parties are frequently more willing to take prompt remedial action.

If appropriate remedial action is not taken, a State order or corrective action letter is issued by the Attorney General's office with the consent of the Governor appointed Citizens' Board. The MPCA has authority to hire cleanup contractors and initiate all necessary remedial activities. State cleanup costs may then be recovered through legal proceedings if necessary.

As the program develops, the MPCA plans to move toward a more preventative approach, relying less on response-oriented activity and more on the owner's or operator's efforts to prevent releases. This will include developing a more extensive certification program and focusing on proper installation and removal techniques in order to prevent future releases, while continuing to use the Petro Fund for reimbursement of responsible party actions.

NEW MEXICO

The UST program in New Mexico was officially established in August 1986 and is administered by the UST section of the Groundwater Bureau in the State's Environmental Improvement Division (EID). The program currently focuses on responding to complaints and other notifications of releases, and it has a well-developed enforcement response process. However, a very active effort is currently underway to develop comprehensive UST regulations with an emphasis on preventing leaks. The program is expected to greatly expand with the collection of UST registration fees and the issuance of specific UST regulations in 1988.

The UST program developed out of the State's efforts to prevent contamination of ground and surface water. Over 90 percent of the population relies on ground water for drinking water supplies; in rural areas, this dependency is nearly 100 percent. Water pollution caused by UST releases was initially covered under the 1967 Water Quality Act, which provided cleanup standards for releases of any hazardous substance (including petroleum) into ground water. The major impetus to focus on UST environmental problems, however, came from a 1984 EPA-funded study conducted by EID. The study, entitled "Hydrocarbon Contamination of Ground Water and Soil in New Mexico," identified

petroleum releases from USTs as the primary cause of ground-water contamination from all petroleum-related activities. In addition, EID became increasingly sensitive to the UST situation in the State by reviewing the data collected during the Federal UST notification process. The new awareness led to the formation of a State-level group to focus on the need to regulate USTs.

The UST staff currently directs its efforts toward identifying and responding to releases of petroleum and other substances into ground water. The program does not have procedures for routine inspections and most inspection efforts concentrate on responding to complaints of violations and releases. However, the State has also identified inadequate installation as a primary cause of tank releases, and it intends to focus future compliance monitoring efforts on tank installations.

Because of the concern for ground water, the State has developed an extensive enforcement process to bring violators into compliance and encourage cooperation from responsible parties. Upon notification of a release or violation, the UST staff documents the case, conducts assessments to determine the extent of the threat, and begins negotiations with the responsible party or violator to determine appropriate actions. The extent of the litigation depends upon the severity of the environmental impact, the potential health threat, and the cooperation of the responsible party or violator. The objective of the enforcement process is to reach an agreement whereby the responsible party or violator will undertake appropriate actions under the supervision of the State.

The prevention component of the UST program is expected to expand in the near future. The State is developing new regulations specific to USTs that include technical standards, financial responsibility, tank installer certification, and closure requirements. With the adoption of the regulations, the State UST staff expects to increase its inspection program, develop remedial action standards, and expand outreach.

RHODE ISLAND

Rhode Island established a comprehensive UST regulatory program in 1985. The program is administered by the Rhode Island Department of Environmental Management with legal advice from the Rhode Island Department of Legal Services. The primary concern of Rhode Island officials is the prevention of ground-water contamination because the State's high water table facilitates the spread of contamination from releases into public and private drinking water supplies. With technical regulations being developed by the Federal EPA, Rhode Island officials looked to develop a program that would provide immediate protection of ground water while maintaining the flexibility to incorporate impending Federal requirements. The Rhode Island program, therefore, emphasizes three techniques to identify and remediate possible sources of aquifer contamination: establishing stringent tank testing and notification requirements; monitoring tank closures; and maintaining the authority to impose site-specific tank requirements.

The prevention component of the UST program serves to detect leaks before major environmental damage occurs by imposing stringent precision testing requirements. Existing USTs must be precision tested at 5, 8, 11, 13 years after installation and annually thereafter. New USTs must be tested every 5 years in addition to complying with the established technical standards. Program officials expect that data from UST registrations and precision test results will be fully computerized by 1988 so that notices may be sent to owners or operators who fail to comply with the test requirements. Rhode Island officials also review all proposed UST installation plans and have the statutory authority to require that more stringent technical requirements, such as double-walling or monitoring wells, be installed at UST facilities located in a sensitive aquifer area.

The primary activity of the Rhode Island program is to monitor all UST system closures in the State in order to detect and remediate contamination from leaking USTs. State officials chose to target closures for two reasons. First, ensuring that tanks are closed properly ensures that contamination would not be released into the soil and/or ground water indefinitely. Second, the small size of

the State made the labor requirement feasible. A State UST official oversees each UST closure and inspects the surrounding area for contamination. If soil contamination is discovered, the official usually requires that it be removed immediately by the contractor on the site. More extensive damage, including contamination of ground water, may require that the responsible party enter into a consent agreement specifying the actions necessary to remediate site contamination.

Department officials use both informal negotiations (e.g., letters of noncompliance, telephone contact, consent agreements) and formal enforcement procedures (e.g., administrative orders, with or without penalty assessments) to encourage compliance by owners and operators. However, only 15 formal orders were issued in 1986.

Rhode Island officials also encourage compliance through notices in oil industry magazines and newspapers, press conferences, and information letters sent directly to the regulated community. In addition, UST installation contractors and tank testers have been instrumental in informing the regulated community about the program.

TEXAS

The Texas UST Section was established within the Texas Water Commission in 1986 to handle UST registration, enforcement and oversight of leaking USTs, and program development. At that time, the UST program was operated under the general authority in the Texas Water Code. Passage of UST legislation in the summer of 1987 enabled the Commission to promulgate specific UST regulations and enhanced its ability to bring successful enforcement actions against owners or operators of leaking UST systems.

As a result of the 1987 UST statute, the UST Section has focused its efforts on two basic functions. First, the staff oversees UST registration

and notification. Owners or operators are required to notify the Commission of any new or replacement UST installations and to register all existing UST systems. Owners or operators must also notify the Commission prior to permanently removing an UST system from service. Program officials expect that, with some expansion of the existing program, inspectors will be able to monitor a greater percentage of UST installation and removal sites using the notification requirements as a basis for targeting some sites for inspection.

Second, UST officials have the statutory authority to perform, or order the owner or operator to perform, any action necessary to correct a leaking UST. At present, approximately 75 percent of UST staff's time is devoted to oversight of leaking UST remedial action. The Texas regulations require that leaks be reported to the Commission within 24 hours. The UST staff believes that owner or operator compliance with the regulations is enhanced because of the enforcement procedures established by the Commission. Initial enforcement responses are informal; UST staff members work cooperatively with the violator or responsible party to secure corrective actions and compliance. Penalties are rarely levied against individuals who demonstrate good faith in reporting and performing remedial actions. However, continued noncompliance does result in legal action by the Commission's Office of Hearings Examiners, at which time administrative penalties may be assessed.

Compliance outreach efforts in Texas have been strongly linked to Texas Oil Marketers Association (TOMA) representatives who have maintained close contact with UST staff since the passage of the UST legislation. TOMA has implemented information dissemination programs for its members; UST staff have submitted information for UST-related articles for TOMA's newsletter and have provided guest speakers at several regional TOMA meetings.

State UST Enforcement Programs

	Tank Inventory	Outreach	Compliance Monitoring	Primary Enforcement Actions	Delegation to Localities	Tank Fees
California	State inventory in 1984 Local fire dept. records Local weights and measures records Tank permits	Varies by county: - Primarily letters to owners/operators on permit requirements - Includes meetings, workshops, etc.	Permit needed for tank operation. Requirements include: - Tightness test - Approval of leak detection system - Leak detection system inspection Installation and closure inspections conducted	Emphasis on informal negotiations including: - Phone calls - Warning letters - Innovative techniques, e.g. credit rating damage for permit fee violation. Formal actions through county District Attorney <u>Cleanup/abatement orders</u> - Issued by State Regional Water Quality Control Board	Counties required by State law to implement UST programs Some cities run programs in lieu of the counties	Annual permit fee (varies by county) State surcharge every 5 years (\$56 per tank)
Maryland	Federal notification Tank tightness test results Citizen complaints	Ad Hoc Committee of government, industry, and community representatives Public notice fliers Advertisements by tank testing companies	State inspectors' responsibilities include: - Response to complaints - Follow-up on failed tank test results - Occasional routine inspections	<u>Formal warning</u> : Issued by inspectors and lists actions required for compliance <u>On-site complaint</u> : Issued by inspectors and specifies potential fines and actions necessary for compliance <u>Notice of Violation</u> : used to order actions or assess penalties	No formal delegation. A few localities have their own permit and inspection regulations.	No tank fee License fee on processed fuel
Massachusetts	Federal notification Information Tank installation permits Citizen complaints	Mass mailings to tank owners and operators Public hearings on draft regulations	Investigation of release sites and oversight of remedial actions Local officials conduct tank installation and closure inspections	<u>Notice of Responsibility</u> : Informs the responsible parties (RP) of their liability, and penalties for non-compliance <u>Cost Recovery</u>	Regulatory enforcement delegated to local fire officials	None
Minnesota	Federal notification Information Release reporting	Public meetings Notices in newspapers, trade journals, hazardous waste newsletter	Response to releases	<u>Agreement-to-proceed</u> : RP agrees to recognize leak and proceed with cleanup activities <u>State Order</u> : penalties and order must first be approved by a Citizens' Board <u>Cost Recovery</u>	No formal delegation Local fire codes are enforced	No tank fee Petroleum tax

State UST Enforcement Programs *(continued)*

	Tank Inventory	Outreach	Compliance Monitoring	Primary Enforcement Actions	Delegation to Localities	Tank Fees
New Mexico	Federal notification information Realtors, landowners, land purchasers report tanks during real estate transactions Reports from utility and construction workers Citizens complaints	Monthly meetings with industry officials, and petro marketers, dealer associations, lobbyists Newsletter being established	Response to complaints Installation inspections being planned Occasional closure oversight	Notification/Incident Report: basic data on release Site Visit/Assessment on-site investigation Notice of Violation: requires that the RP begin negotiations Negotiation: RP and State determine the necessary remedial action Settlement Agreement: legally binding document for clean-up	Memorandum of Understanding (MOU) with Albuquerque	Proposed annual tank fee (\$28 first year)
Rhode Island	Federal notification information Registration certification Closure certification Tank tightness test results	Notices in oil industry magazine and newspapers Press conferences Advertisements by tank testing companies News releases of major violations	Review of tank installation plans Review of precision test results Testing procedures approved by State Tank closure inspections	Informal negotiations Consent agreement: RP agrees to take the necessary corrective action Notice of Violation: includes a penalty assessment based on a penalty matrix Immediate Order	None	None
Texas	Federal notification information Installation notice Closure/abandonment notice Registration	Communication with the Texas Oil Marketers' Association (newsletter, meetings) Public notice fliers	Response to releases Oversight of some installations and closure activities	Notice of Violation: informal notification Agreed Enforcement Order: negotiated settlements Notice of Impending Enforcement Actions: outlines penalties Hearings and Commission Action: formal response	No formal delegation Some cities have developed their own programs	Annual tank fee (\$25 per tank)

CHAPTER V.

USER'S GUIDE TO SELECTED COMPLIANCE TECHNIQUES

The previous chapters presented a wide array of options for building or improving a State or local UST program, particularly with a view toward enhancing compliance. This chapter discusses some techniques currently being used in State programs—as well as a few that are apparently not being used. This chapter is intended to be a User's Guide in that it provides detailed information on how to adopt these techniques. The examples are not representative of a "model program" and, in fact, they might be incompatible if taken together. However, they are suggestions of techniques or programs that might be economical and easily adapted to other situations.

The organization of this chapter is similar to that of Chapter II: Components of UST Compliance Programs. The chapter topic headings, while not identical, relate to the same subject matter and appear in the same order. They are:

- Statutory authority.

- UST inventory,
- Compliance outreach,
- Violator identification,
- Enforcement response, and
- Program delegation.

This organization should help the reader flip back and forth from Chapter II to Chapter V to obtain more information about a specific technique or program area. Some of the exhibits appears in both chapters.

The following techniques are included primarily because each can enhance compliance while saving measurable time or resources. Each example contains an explanation of the benefit to the program, although often the value is obvious. Further information on the examples can be obtained by contacting the State, county, or city program personnel listed the Appendix.

STATUTORY AUTHORITY

Legislation that authorizes the existence and actions of an UST program is an obvious necessity. A State that is designing new UST legislation has a number of sources or models for program elements. One helpful source is legislation that exists in other States. In 1985, the National Association of Attorneys General (NAAG) compiled existing UST requirements into a Report to EPA entitled "Assessment of State Statutory and Regulatory Authority for Underground Storage Tanks." Although the report is somewhat dated, the contents are a comprehensive collection of various State approaches. Specific examples of statutes used by States to develop their UST programs can be found in the individual reports on the interviews with State officials.

Another useful resource is a model statute. The National Conference of State Legislatures (NCSL) in conjunction with the EPA drafted a model State

UST statute in 1985. Although it has been superceded to some extent by amendments to RCRA (under the Superfund Amendments and Reauthorization Act of 1986), the model contains several useful sections on: definitions and exemptions, notification requirements, new tank standards, leak detection and record maintenance, reporting of releases, corrective action, financial responsibility, inspections, monitoring and testing, and an optional section on tank permit requirements. The model statute might provide a helpful framework for designing legislation when Federal technical standards and financial requirements are promulgated and incorporated into the framework. In addition, the Bureau of National Affairs offers a commercial service that provides an up-to-date collection of State UST statutes and regulations. Exhibit V-1 provides the address and telephone number of the references discussed above.

National Association of Attorneys General
444 North Capital Street, NW
Washington, D.C. 20001
(202) 628-0435

Bureau of National Affairs, Inc.
1231 29th Street, NW
Washington, D.C. 20037
(202) 452-4200

National Conference of State Legislatures
444 North Capitol Street, NW
Washington, D.C. 20001
(202) 624-5400

UST INVENTORY

Tank Registration and Tagging

An important component of any State enforcement program is an updated inventory of all regulated USTs. However, enforcing the registration and notification of a large, diverse regulated community can be difficult. One way of enforcing such requirements is to rely on UST-related groups, such as distributors, to assist in tracking UST inventory. Iowa, for example, has developed a program that uses distributors to assist in encouraging compliance with the State's registration requirements. The registration and tagging program was developed by the State's Department of Natural Resources (DNR) to prevent the operation of UST systems that have not been registered with DNR. (See Exhibit V-2.) Iowa's requirements include:

- Annual registration of all USTs with DNR's Licensing Section,
- Payment of annual registration fee of \$15 per tank (if greater than 1100 gallons), and
- Displaying the registration tag on all tank fill pipes.

In this program, distributors must check whether the tank they are about to fill has the required registration tag. If the tag is missing, the

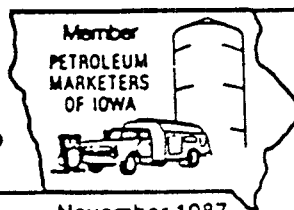
distributor is allowed to fill the tank *once*. Filling an unregistered tank more than once is a violation of the regulations. It is also the distributor's responsibility to:

- Inform the owner or operator of the UST registration requirements,
- Supply the owner or operator with a registration form, and
- Notify DNR of the distribution of the product under such conditions.

The regulations are formally enforceable with administrative orders, fines, and court actions. Both the owner or operator and the distributor may be penalized for illegal actions: if the owner or operator fails to come into compliance by registering the tank, or if the distributor fails to report an unregistered UST. So far, the program has proven to be very successful in achieving compliance through issuing informal letters of violation rather than taking formal enforcement actions.

The program was strengthened significantly by making it the responsibility of the distributor to report to DNR any USTs without a valid tag. This distribution of responsibility successfully reduced the hours and resources needed by DNR by using sources who come into contact with violators under normal circumstances.

C-STORE/ GASOLINE RETAILER



NEWSLETTER

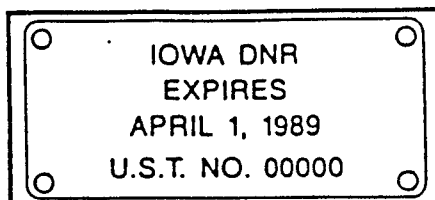
November 1987

Iowa Underground Tank Fees and Tags

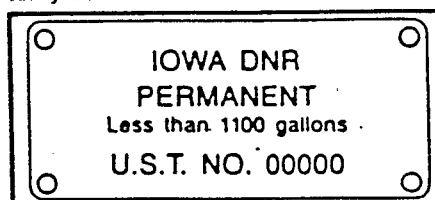
Displayed here are the actual sizes of the proposed new Iowa Department of Natural Resources underground tank tags. The Underground Storage Tank (UST) number is only a DNR record for who received the tag. The number has no relationship to the underground tank's original registry number.

Iowa's registered underground tank owners will soon be receiving Iowa Department of Natural Resources' invoices for a \$15 per year tank fee for all tanks 1,101 gallons and over. Once the fee is paid, the DNR will issue a one year (1988) tank tag to be attached to the fill pipe. This annual fee will be assessed every year unless a law change is enacted. The deadline for paying this annual tank tag fee is January 15, 1988. All registered underground tanks 1,100 gallons or less will not be assessed the annual fee and will receive a permanent fill pipe registration tag from Iowa's DNR.

The 1988 tank tags are part of Iowa's recent law change to prohibit petroleum cargo tank deliveries into underground tanks that are not registered. A one-time delivery is allowed if the delivery person reports the storage-



Annual underground tank tag color will change each year.



Permanent underground tank tag will be aluminum color.

tered tank to the Iowa DNR and provides the tank's owner with a registration form. The tank owner has 15 days from the date the Iowa DNR receives the petroleum delivery person's report to register the tank for \$10. After 15 days, the registration fee jumps to \$25.

Bulk petroleum delivery persons are not required to report deliveries of underground tanks that are exempt from registration. These exempt tanks would not have a fill pipe tag. Exempt are underground heating oil tanks for consumptive use on the premises where stored, residential (private non-commercial) and farm underground tanks of 1,100 gallons or less until July 1, 1989. Iowa's law requires all existing unregistered farm and residential underground tanks storing motor fuels to register at no charge by July 1, 1989.

COMPLIANCE OUTREACH

An important component of an effective enforcement program is educating the regulated community and the public about the UST regulations. States with established UST programs have developed several strategies to promote compliance through outreach. Often, the first step is to identify potential members of the regulated community; that is, any person or company that owns or operates a regulated UST. Petroleum producers, refiners, wholesalers, and service station owners are some of the more obvious members. However, the UST regulations affect a wide range of industries including:

- Transportation services (e.g., airports, trucking firms, railroads, bus companies, ambulance services);
- Automotive services (e.g., car and truck rental agencies, towing services, auto recyclers);
- Manufacturing industries (e.g., chemical, electrical, metal);
- Public agencies (e.g., police stations, fire departments, public works departments, government agencies);
- Institutions (e.g., universities, prisons, hospitals);
- Service industries (e.g., golf courses, amusement parks, dry cleaners, repair companies, delivery services); and
- Farmers and ranchers.

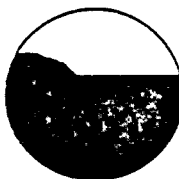
Once the regulated community has been identified, an outreach program can use several methods to educate the community about the regulatory requirements, communicate the benefits of complying with the regulations, and publicize the penalties for noncompliance. Some methods may target a specific sector within the regulated community. For example, publishing notices in oil industry magazines or other trade association publications may effectively and quickly inform members in a particular industry. Likewise, UST officials may chose to sponsor monthly meetings

with specific industry representatives. UST officials would then seek the assistance of the industry representatives to communicate the program requirements to their respective members.

Other outreach methods may be best suited to a wider audience, including the public. For example, publishing information notices in major or local newspapers or distributing information in mass mailings can serve several purposes. First, such broad communication may help reach more isolated members of the regulated community, such as owners and operators of small facilities or people in rural areas. In addition, educating the public may encourage citizens to notify the State agency of releases or violations.

The two examples presented here provide illustrations of outreach techniques that serve these purposes. The first example (Exhibit V-3) is a public notice flier developed by the State of Maryland's Department of Environment. This notice, which describes the regulatory requirements for tank testing, was widely distributed throughout the State. Because the regulatory requirement for precision testing has been only recently implemented, the State distributed these as a means of informing the community of the new regulation to assist in compliance. The notice provides information on test methods approved by the State and telephone numbers for more information.

The second example (Exhibit V-4) was developed by the State of Rhode Island for promoting compliance with enforcement orders. The State has issued press releases on enforcement actions and penalties assessed against major violators. The example here publicizes the large penalty assessed against an oil company for failure to notify UST officials of a gasoline leak. The news release also includes details of the corrective action measures necessary to remediate the site. The adverse publicity apparently had a positive influence on the company's compliance efforts in addition to informing other members of the regulated community about the UST program requirements.



Maryland Department of Natural Resources

Water Resources Administration
Tawes State Office Building
Annapolis, Maryland 21401-9974

**IF YOU HAD AN UNDERGROUND
OIL STORAGE TANK INSTALLED
IN MARYLAND PRIOR TO 1971
YOU ARE REQUIRED
BY MARYLAND OIL CONTROL LAW
AND REGULATIONS TO HAVE THIS SYSTEM
TESTED FOR TIGHTNESS
BEFORE JANUARY 28, 1987**

**ALL UNDERGROUND OIL STORAGE TANKS BURIED FOR 15 YEARS
OR MORE EXCEPT SINGLE FAMILY RESIDENCES AND
FARM STORAGE TANKS UNDER 10,100 GALLONS MUST BE TESTED.**

**TESTS MUST BE PERFORMED BY COMPANIES USING TEST METHODS
APPROVED BY THE DEPARTMENT OF NATURAL RESOURCES,
WATER RESOURCES ADMINISTRATION, AS LISTED BELOW:**

PETRO-TITE™

LEAK LOKATOR™

EZY-CHECK™

**FOR MORE INFORMATION AND A LIST OF TANK TESTERS CONTACT
THE DEPARTMENT OF NATURAL RESOURCES,
WATER RESOURCES ADMINISTRATION,
OIL CONTROL DIVISION,
TAWES STATE OFFICE BUILDING,
ANNAPOLIS, MARYLAND 21401
OR CALL (301) 269-2105.**

Help keep Maryland waters clean!

4/86

News Release



Rhode Island Department of Environmental Management Office of Information & Education

Release: IMMEDIATE

Information:

Saverio Manceiri 277-2234
Howard Cohen 277-2771

Wednesday, January 21, 1987

COMPANY FINED FOR FAILURE TO REPORT UNDERGROUND TANK LEAK TO DEM

The Exxon Company has agreed to pay \$46,500 into the state's Environmental Response Fund as part of a consent agreement with the RI Department of Environmental Management.

The agreement was reached after DEM notified the company it had violated state law by failing to report a gasoline leak or to take corrective action to prevent an ongoing leak at the Metacom Service Station in Bristol.

The leak, from underground storage tanks, was discovered during required testing of the 20-year-old steel tanks in July. DEM was notified by the testing company in late August, and sent Exxon a notice of violation and order to take corrective action.

The tanks were pumped out and removed in September, and seven monitoring wells were installed. Well sampling showed the presence of several hydrocarbons - benzene, toluene, ethylbenzene, and xylene, primarily in the two wells closest to the former tanks. No detectable amounts were found off the property. There are no known wells in the area being used for domestic purposes.

In addition to the administrative fine, the consent agreement requires Exxon to continue sampling the monitoring wells, and to notify all Rhode Island Exxon dealers of the requirement in DEM underground tank regulations that DEM immediately be notified of any tank that fails to pass a precision test, and of any leak or spill.

The penalties were agreed to in lieu of an administrative hearing which originally had been requested by the company as a result of the notice of violation and order.

VIOLATOR IDENTIFICATION

Data Base/Information Management

One of the least resource-intensive methods that can be used to help monitor compliance of the regulated community is to rely on the data available in the records and reports submitted by tank owners or operators. At a minimum, such requirements include keeping records on tank tightness testing and monitoring results, leak detection devices, corrosion protection systems, and UST repairs and closures.

Effective use of reported data can be facilitated by the development of data bases for monitoring such data. Contra Costa County in California has developed and implemented a data management system designed for its specific needs and requirements. UST inventory data were obtained from State registration data and from information provided by local fire departments. The county then selected data pertinent to its concerns and developed a data management program to:

- Invoice UST owners or operators for permit fees;
- Edit and update current UST data, including tank location, tank owner's name, facility identification number, facility name, and owner's telephone number; and

- Issue permits at 5-year intervals.

The basic information is kept in a data base file that has specific UST information, including tank size, age, description, contents, date of last testing, and monitoring devices used (Exhibit V-5). A separate file, called a site file, includes information on a site: its date for retesting, permit number, permit expiration date, and compliance status. A sample menu screen from this file is shown in Exhibit V-6.

The data base is used to send notices regarding annual tank testing requirements and to record the responses and results of such tests. It also tracks UST removal information and records results from the required soil and water samples accompanying each removal activity (Exhibit V-7). If no contamination exists, an "OK" status code signifying the completion and closure of the file is recorded. Any necessary remedial action is also recorded in the data base, and the Department of Health Services refers the case to the appropriate department (frequently a State or Regional Water Board) for future action.

Information collection such as this has enabled the county to significantly reduce the resources utilized in tracking and recording data and to establish an automated system of permit issuance and renewal.

UGT PROGRAM: TANK SPECIFIC PRIMARY INFO		NumCaps	KEYS
-----			-----
UGT FACILITY ID #: 20267	CC Co Tank #: 5		O# = OPERATING PERMIT
-----			A# = ABANDONED
TANK STATUS: 01 - - > - - > - - > - - >>			L = LEAKING, NOT ABAN
Tank status effective date: 04/16/87			R = REMOVE FROM FILE
Volume (gals): 12000			W = WELL
Original Tank Test: 04/16/87			N# = NO PERMIT
			E = EXEMPT
Surcharge Paid? Y/N: YDate: 02/17/86			
Type of fuel: 03 - > - > - > - > - > - >>			1 = UNLEADED
Year of installation: 1987			2 = REGULAR
Is Tank Vaulted? Y/N: N			3 = PREMIUM UNLEADED
Number of Walls: 1			4 = DIESEL
	. . C = CLOSURE (TEMP)		5 = WASTE OIL
	. . 0 = VISUAL		6 = OTHER
	. . 9 = CONTINUOUS		7 = PREMIUM LEADED
Monitoring Alternative: 9	. . 1-8 PER SWRCB		8 = EMPTY

NumCaps UNDERGROUND TANK PROGRAM SITE INFORMATION	
SITE	OWNER # sites owned: 1 acct #: 980610
UNOCAL SS# 6927 1900 OAK PARK BLVD PLEASANT HILL 94523 (512) 223-2631	UNOCAL P.O. BOX 8175 WALNUT CREEK CA 94596 (415) 945-7676
SITE DESCRIPTION	SITE PERMIT INFO
UGT Facility ID : . 20267 Billing Status: I Number of operating tanks: 3	Compliance: Y Permit #: Status: effective date: / / Issue Date: / / Expiration Date: / /
NOT a farm Business Type: Gas Station	

EDIT THIS INFORMATION ..Y/N

TANK INFO FOR ALL TANKS AT SITE # 20267 follows:

Please insure that the # of tanks with status codes (tnk_status, below) indicating ** operating ** = 3, and that other info is correct

ugt_facid	tank_no	tnk_status	t_stat_eff	vol_gals	substance	monitor	E->rp
20267	1	A4	04/01/87	9940 01	5	Y	
20267	2	A4	04/01/87	9940 02	5	Y	
20267	3	A4	04/01/87	9940 03	5	Y	
20267	4	01	04/16/87	12000 01	9	Y	
20267	5	01	04/16/87	12000 03	9	Y	
20267	6	01	04/16/87	10000 04	9	Y	

Press any key to continue...

```

1  UGT site name: UNOCAL SS# 6927          NumCaps      ID #: 20267
    ....address: 1900  OAK PARK BLVD        # of OPERATING tanks... 3
    -----
    Site Status: 01  - - > - - > - - > - - > - >>      KEY
Status effective date :    /  /
                                     -----
Gas Station? Y/N:  Y                                     O# = Operating Permit
Business Type:                                     A# = All tanks abandoned
Farm? Y/N:  N                                       R = Remove from file
                                     N = No Permit
                                     E = Exempt

In Compliance ? Y/N:  Y
    Permit #:
Permit Issue Date:    /  /
Permit Expiration Date:  /  /
Last Inspection:      /  /
Tank Test Due:        /  /

```

EDIT THIS DATA? ...Y/N

TANK STATUS

01 Operating, New Permit (5 year permit)
 02 Operating, Conditional Permit (either Mon Alt #8 -3yr permit
 or Temp closure - 2 yr permit)

 A1 Recieved money, Application
 A2 Tanks removed, pending soil results
 A3 Soil results OK
 A4 Soil results not OK
 A7 Abandoned in place
 A8 Removed prior to August 1, 1985

 W# Monitoring well in place
 E Exempt
 R Removed from list, this tank never existed

 N1 No Tank Test
 N2 No Monitoring Plan
 N3 No Application
 N4 No Money

 B1
 B2
 B3

VIOLATOR IDENTIFICATION (cont.)

UST Permitting Program

A permitting program allows a State to collect substantial information on the regulated community and to enforce against the terms of the permit. While a comprehensive permitting program can be time-consuming and resource-intensive, it does provide an effective means of monitoring the compliance status of all operating UST facilities in a State. In most permitting programs, tanks cannot be operated without the owner or operator first obtaining a permit. The permit renewal process provides for the periodic monitoring of compliance status. Also, by requiring that the permit be prominently displayed, it can be easily checked during an inspection and serves as a notice to vendors that the tank meets compliance standards. In addition to the primary benefit of ensuring compliance, a permitting program can generate data useful for other purposes. For example, it can identify tanks for subsequent targeted inspections and track the performance of different tank technologies, thereby identifying likely problem sites.

The most comprehensive permitting program among the seven States interviewed is California's, which is implemented at the county level. An excellent example of how a permitting program can be implemented is the San Mateo County program. A brief description of the permit process in San Mateo County follows:

- 1) After a tank has been identified through the county inventory process, the Office of Environmental Health (OEH) in the Department of Health Services sends an initial registration notification letter to the owner or operator (Exhibit V-8). Included with this letter is an "Underground Storage Tank Permit Application" (Exhibit V-9). The registration notification letter provides instructions on fulfilling the requirements for obtaining a tank permit.
- 2) After the owner or operator returns the completed tank permit application, an interim permit, that is valid for 6 months, is issued (Exhibit V-10). The OEH then performs an initial inspection. This inspection serves to

identify actions the owner or operator must take to receive a tank permit (e.g., perform needed repairs, install additional monitoring equipment) and the date by which such actions must be completed. The owner or operator is required to sign the "Certificate of Completion of Initial Inspection" form at the conclusion of this inspection. This form specifies the dates by which various UST permit requirements must be met (Exhibit V-11).

- 3) Upon receipt of the interim permit, the owner or operator is responsible for submitting an UST monitoring plan within 4 months of the initial inspection and having a precision test conducted on tanks and pipelines within 6 months of the interim permit notification. These requirements are set forth in a letter accompanying the interim permit (Exhibit V-10).
- 4) During the interim permit period, the OEH provides considerable assistance to the owner or operator regarding both the choice of tank monitoring alternatives and the precision test requirements. The owner or operator is also sent a list of precision tank testing services companies. This list, however, includes a caveat that states, "mention of company names and products does not constitute an endorsement or recommendation for use by the San Mateo County Department of Health Services" (Exhibit V-12).
- 5) Upon receipt of the precision test results and the UST monitoring plan, a 5-year permit is issued by the county (Exhibit V-13). One year after conducting the initial permit inspection, a follow-up inspection is conducted to verify that the owner or operator has complied with the permit requirements. In conducting this inspection, a checklist type report form is used by the inspector to check the results of the precision test and the maintenance of monitoring equipment and records as well as to inspect for unauthorized releases. A space for listing any needed corrections is also provided (Exhibit V-14).
- 6) If an owner or operator has selected a tank monitoring alternative that requires inventory reconciliation, a quarterly report must be submitted to the OEH (Exhibit V-15).

Department of Health Services
PUBLIC HEALTH DIVISION — Environmental Health



COUNTY OF SAN MATEO

590 HAMILTON STREET • REDWOOD CITY • CALIFORNIA 94063 363-4305

BOARD OF SUPERVISORS

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JOHN M. WARD

MARGARET TAYLOR
DIRECTOR OF HEALTH SERVICES

August 1, 1986

Dear Underground Tank Owners/Operators:

As a result of severe groundwater contamination caused by leaking underground storage tanks, the California legislature passed several bills which require owners and operators of underground tanks to assume certain responsibilities. This letter is intended to provide you with information regarding your obligations as an owner/operator of an underground tank facility and to assist you with compliance pursuant to the new laws.

AB 2013 (Cortese) required that all owners of underground hazardous materials storage facilities (including motor vehicle fuels) file a Hazardous Substance Storage Statement with the State Water Resources Control Board.

The California Administrative Code (CAC), Title 23, Chapter 3, Subchapter 16 (i.e. Underground Tank Regulations) became effective on August 13, 1985. The major components of these new laws specify construction standards for new or planned tank installations, and monitoring and leak detection requirements for existing tanks. Please be advised that new tank installation requirements mandate double containment for all underground tanks containing hazardous materials.

In this County, the Environmental Health Division of the Department of Health Services will be the Agency responsible for ensuring compliance with all regulations of the CAC pertaining to underground tanks.

Other obligations pursuant to the new law require owners/operators to:

1. Apply for a permit from the local agency (in this case, the San Mateo County Department of Health Services).
2. Keep inventory and maintenance records of each tank.
3. Notify the local agency when an unauthorized release occurs, or if you plan to remove, repair or alter your underground tank system.

To apply for a permit, please complete the enclosed application(s) and submit the appropriate fees. Fees are based on the number of tanks at the facility. The first tank is \$132.00, each additional tank is \$80.00. Also, a State surcharge of \$56.00 is required for each tank. As an example, a service station with four tanks would pay \$132.00 for the first tank, \$80.00 for each of the three remaining tanks (\$240.00) and a \$56.00 surcharge for each tank (\$224.00) for a total of \$596.00 for the facility.

County Environmental Health personnel will inspect your underground tank facilities at least once annually. This will determine whether the tanks comply with design and construction standards, whether the operator has monitored and tested the tank as required, and whether the tank is in safe operating condition. We are also able to provide you with resource lists and any information you may need to effectively begin your underground tank monitoring program.

Please be advised that the costs associated with cleanup of an underground leak can be astronomical, so money spent on leak prevention makes good sense and is easily justified. When looking at an effective leak detection and monitoring program, several items should be considered. If your tanks are over seventeen (17) years old, there is a 50% chance that they are leaking (EPA data on steel tanks). With this information and other supportive data, it may be more advantageous to save the expense of monitoring systems and to budget for replacement of the tank(s) with a completely double contained system. If the monitoring requirements are not cost effective for the tanks at your facility, then tank removal may be the only feasible solution. Tank removals require permits, and soil and/or water sampling is required to determine if there has been any past contamination.

Please contact this office at (415) 363-4305, if you have any questions regarding these issues. Thank you for your cooperation.

Sincerely,

Mark A. Kostielney
Director of Environmental Health

By _____

OFFICE OF ENVIRONMENTAL HEALTH • 590 HAMILTON STREET REDWOOD CITY CA 94063
(415) 363-4305

UNDERGROUND STORAGE TANK PERMIT APPLICATION

1. Facility

Facility Name		Owner/Personnel Supervisor	
Street Address		Telephone (Area Code)	
City	State	Zip Code	Telephone
Type of Business		Type of Underground Tanks	
Mailing Address		City	State

2. 24-Hour Emergency Contact Person

Name	Telephone (Area Code)	Home Address
Name	Telephone (Area Code)	Home Address

3. Owner

Name (Corporation, Individual or Public Agency)
Street Address
City
State
Zip

COMPLETE THE FOLLOWING ON A SEPARATE FORM FOR EACH TANK

4. Description

Manufacturer (if applicable)	Year Manufactured	First Installed	Tank ID #
Tank Capacity in Gallons	Does the Tank Store Flammable or	<input type="checkbox"/> WASTE <input type="checkbox"/> PRODUCT	
Comments			

5. Construction

A. Thickness of Primary Containment _____ Gauge <input type="checkbox"/> Inches <input type="checkbox"/> cm <input type="checkbox"/> Unknown	
B. <input type="checkbox"/> 1 Vaulted (Located in an underground Vault) <input type="checkbox"/> 2 Non-vaulted <input type="checkbox"/> 3 Unknown	
C. <input type="checkbox"/> 1 Double Walled <input type="checkbox"/> 2 Single Walled <input type="checkbox"/> 3 Lined	
D. <input type="checkbox"/> 1 Carbon Steel <input type="checkbox"/> 2 Stainless Steel <input type="checkbox"/> 3 Fiberglass <input type="checkbox"/> 4 Polyvinyl Chloride <input type="checkbox"/> 5 Concrete	
<input type="checkbox"/> 6 Aluminum <input type="checkbox"/> 7 Steel Clad <input type="checkbox"/> 8 Bronze <input type="checkbox"/> 9 Composite <input type="checkbox"/> 10 Non-metallic <input type="checkbox"/> 11 Earthen Walls	
<input type="checkbox"/> 12 Unknown <input type="checkbox"/> 13 Other _____	
E. <input type="checkbox"/> 1 Rubber Lined <input type="checkbox"/> 2 Alkyd Lining <input type="checkbox"/> 3 Epoxy Lining <input type="checkbox"/> 4 Phenolic Lining <input type="checkbox"/> 5 Glass Lining	
<input type="checkbox"/> 6 Clay Lining <input type="checkbox"/> 7 Unlined <input type="checkbox"/> 8 Unknown <input type="checkbox"/> 9 Other _____	
F. <input type="checkbox"/> 1 Polyethylene Wrap <input type="checkbox"/> 2 Vinyl Wrapping <input type="checkbox"/> 3 Cathodic Protection	
<input type="checkbox"/> 4 Unknown <input type="checkbox"/> 5 None <input type="checkbox"/> 6 Tar or Asphalt <input type="checkbox"/> 7 Other _____	

5712-15

6. Piping

A. Aboveground Piping: 31 Double-walled pipe 32 Concrete-lined trench 33 Gravity 34 Pressure 35 Suction
 [(Check) appropriate box(es)] 36 Unknown 37 None

B. Underground Piping: 31 Double-walled pipe 32 Concrete-lined trench 33 Gravity 34 Pressure 35 Suction
 [(Check) appropriate box(es)] 36 Unknown 37 None

7. Leak Detection

38 Visual 39 Stock Inventory 40 Tile Drain 41 Vapor Sniff Wells 42 Sensor Instrument
 43 Ground Water Monitoring Wells 44 Precision Test 45 Internal Inspection 46 None
 47 Other: _____

8. Chemical Composition of Materials Currently or Previously Stored in Underground Tanks

8A. Does the Tank Store Motor Vehicle Fuel or Waste Oil? 31 Yes 32 No If Yes, Check appropriate box(es)

33 Unleaded 34 Regular 35 Premium 36 Diesel 37 Waste Oil 38 Other (List) _____

If you answered yes do not complete Part 8B

8B

Currently stored previously stored CAS # (if known)

Checkmark the box Use Chemical name Use additional paper for more rooms

01	02								
01	02								
01	02								

Is Tank located on an Agricultural Farm? 31 Yes 32 No

9. Additional Information and Applicant Comments

Person Filing (Print or Type Name)

Mailing Address

Person Filing Signature

Phone or cell () 000

000

FOR OFFICE USE ONLY

INSPECTION DATE (1ST INSPECTION)

PERMIT APPROVAL DATE

PERMIT ID NUMBER

TOTAL FEE PAID

NUMBER OF TANKS

FEE PER TANK

STATE SURCHARGE

COMMENTS

Department of Health Services
PUBLIC HEALTH DIVISION — Environmental Health



COUNTY OF SAN MATEO

590 HAMILTON STREET

• REDWOOD CITY

• CALIFORNIA 94083

BOARD OF SUPERVISORS
ANNA G. ESHOO
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JAY GELLERT
DIRECTOR OF HEALTH SERVICES
363-4305

This letter is written to acknowledge receipt of your permit application, provide you with your Interim Permit, and to inform you of your obligations pursuant to Chapter 6.7 of the Hazardous Waste Control Law and the San Mateo County Ordinance No. 02865.

Pursuant to the application you submitted to this office, enclosed you will find your Interim Permit for the storage of hazardous materials in underground tanks. Your permit is conditional upon all of the items listed therein, and is issued only for the tanks and materials specifically mentioned.

This permit is an interim measure which allows the Department time to assist you with the additional testing and monitoring required of all underground tank owners and operators. Once testing and monitoring systems have been completed, a Final Permit will be issued to your facility.

In order to obtain your Final Permit, please conduct the following activities:

1. Conduct a precision test of all tanks and pipelines within six (6) months of the date of this letter. Methods used for testing must be able to detect a release of a hazardous substance at a rate of .05 gallons per hour. A partial list of tank testers is enclosed for your reference. Your equipment or product purveyor can give you additional tank and line testers.
2. After your first inspection by this Department, you are required to submit plans for monitoring your underground storage tanks. You have four (4) months from the date of your inspection to develop and submit your plans for approval. The monitoring plan must include your choice of alternatives (outlined in the enclosed list) as proposed by the State Water Resources Control Board, as well as plans for implementing your system. We strongly suggest you choose your monitoring system carefully, and submit your plans early.
3. Your underground tank monitoring system must be in place and operational within six (6) months after you receive plan approval from this office.

Completion of the above mentioned requirements will assure you have taken the necessary steps to comply with existing regulations regarding the underground storage of hazardous materials. Final permits will be issued to each facility once all requirements have been met.

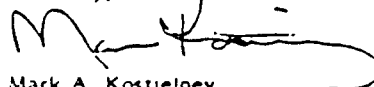
You have two additional options that will allow you to comply with the underground tank regulations:

- a. Replace your existing tanks with double-contained tanks and install leak detection systems to monitor for unauthorized releases into the secondary container (please see insert), or;
- b. If you feel it is not feasible to meet monitoring requirements (outlined in numbers 1-3 above) you will have to remove the tank and demonstrate that no significant soil/water contamination exists around the tank.

Both of the above options (a or b), however, require that you contact this office prior to taking any action.

Please call Paul Dana or Jeff Coyle of this office (415) 363-4305 if you have any additional questions.

Sincerely,



Mark A. Kostielney
Director

MAK/dv

Enclosures

cc: Judith Henley, Principal Environmental Health Specialist

San Mateo County Office of Environmental Health
Hazardous Materials Section - Underground Tank Program
CERTIFICATE OF COMPLETION OF INITIAL INSPECTION

Facility Address:

Date: / /

Dear Underground Tank Owner/Operator:

This letter is to certify that an initial permitting inspection was completed by our Office at the above site. Based on this inspection, the following timetable for completion of permit requirements has been adopted:

ACTIVITY

COMPLETION DATE

1. Precision testing of tanks and pipelines.
Methods used for testing must be able to detect a release of a hazardous substance at a rate of 0.05 gallons per hour.
2. Submission of plans for monitoring underground storage tanks. The monitoring plan must include your choice of alternatives as adopted by the Water Resources Control Board.

Other Requirements:

This is to acknowledge that I have been informed of my deadlines for satisfying underground storage tank permitting requirements.

Signature _____

Date _____

Name (print) _____

Title _____

Inspected by _____ Title _____

PRECISION TANK TESTING SERVICES

The mention of company names and products does not constitute an endorsement or recommendation for use by the San Mateo County Department of Health Services.

AAA Testing, Inc.
1526 W. Mineral King
Visalia, CA 93291
(209) 627-4400

Able Maintenance, Inc.
51 Poley Street
Santa Rosa, Ca 95401
(707) 545-5522

Accutite
35 South Linden
South San Francisco, CA 94080
(415) 952-0327

AES
P.O. Box 151
Bakersfield, CA 93302
(805) 325-2212

Balch Petroleum
930 Ames Avenue
Milpitas, CA 95035
(408) 942-8686

Bay City Testing, Inc.
1716 Ocean Avenue
San Francisco, CA 94112
(415) 997-0608

Becker Industries, Inc.
1036 Darms Lane
Napa, CA 94558
(707) 255-9508

Cardona & Associates
80 Browns Valley Road
Corralitos, CA 95076
(408) 728-1916

Converse Environmental Consultants
101 Howard Street, #A
San Francisco, CA 94105
(415) 543-7295

The Customer Company
1765 Park Road.
Benicia, CA 94510
(707) 745-6691

Dames & Moore
500 Sansome Street
San Francisco, CA 94111-3292
(415) 433-0700

Eagan & Paradiso
9220 "G" Street
P.O. Box 6197
Oakland, CA 94603
(415) 562-5511

Equipment Maintenance Company
2533 Connie Drive
Sacramento, CA 95815
(916) 961-2315
(916) 925-2716

F & H Equipment Maintenance Company
1100 North "J" Street
P.O. Box 88
Tulare, CA 93275-0088
(209) 688-2977

Gettler-Ryan, Inc.
1992 National Avenue
Hayward, CA 94545
(415) 783-7500

H. Harlan & Associates
55 Sand Harbor
Alameda, CA 94501
(415) 865-3161

Heath Consultants, Inc.
511 "D" Harbor Blvd.
West Sacramento, CA 95691
(916) 371-2520

(9/23/86)

Horner E-Z Check Company
P.O. Box 1653
Glendale, CA 91209
(818) 956-0608
(800) 535-5325

OH Materials (OHM)
1950 Channel Drive
West Sacramento, Ca 95691
(916) 372-1331

Petroleum Engineering Company
205 Fifth Street
Santa Rosa, CA 95401
(707) 545-0360

Petro-Tec Services
13424 Imperial Highway
Santa Fe Springs, CA 90670

Petrotek
P.O. Box 54178
San Jose, CA 95154
(408) 292-7566

Precision Industries
2191 Navy Drive
Stockton, CA 95206
(209) 462-9911
(800) 332-5900

R.J. Miller Company
631 Marina Way South
Richmond, CA 94804
(415) 233-9000

R.L. Stevens Company
22240 Meekland Avenue
Hayward, CA 94541
(415) 568-0938

R.W. Johnston & Son
801 - 53rd Avenue
Oakland, CA 94601
(415) 261-9424

Redwine-Manley Testing Services
P.O. Box 80606
Bakersfield, CA 93308
(805) 834-6075

Scott Company Mechanical Contractors
1919 Market Street
Oakland, CA 94604
(415) 834-2333

SOS International
177 Oyster Point Blvd., #19
South San Francisco, CA 94080
(415) 871-8755

Toxguard Systems
P.O. Box 30113
San Bernardino, CA 92413
(714) 370-3470

Triangle Inc. of Sacramento
3525 - 52nd Avenue
P.O. Box 9795
Sacramento, CA 95823
(916) 421-1990

U.S. Tank Testing, Inc.
4520 Stine Road #8
Bakersfield, CA 93309
(805) 397-5791

Vail Oil Company
1741 Leslie Street
San Mateo, CA 94402
(415) 345-2644

(9/23/86)

Department of Health Services
PUBLIC HEALTH DIVISION — Environmental Health
(415) 363-4305

PERMIT TO OPERATE HAZARDOUS MATERIALS
UNDERGROUND STORAGE TANKS

To: _____
Name of Facility _____ Type of Business _____

Location: _____
Street Address _____ City _____ Zip _____

Owner Name: _____

Location: _____
Street Address _____ City _____ Zip _____

Number of Tanks Authorized to Operate: _____

Volume (Gallons)	Materials Stored	Monitoring Alternative
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(use additional sheets as needed)

The Permit to Operate is valid for a period of five (5) years. The permittee must observe the following conditions to maintain the Permit to Operate:

1. In the event of a spill, leak, or other unauthorized release, the permittee must notify the San Mateo County Office of Environmental Health within twenty-four (24) hours of each occurrence.
2. The permittee must notify the Office of Environmental Health within thirty (30) days after any changes in the usage of any underground storage tank, including:
 - (a) The storage of new hazardous substances; (b) Changes in monitoring procedure; (c) Change of owner or operator.
 The Office of Environmental Health may review, modify, or terminate the Permit to Operate upon receiving notification of the above changes.
3. The permittee must perform yearly maintenance testing of all equipment including meters, pipeline leak detectors, emergency shutoff valves, and vadose zone or annular space monitors (if applicable).
4. The permittee must obtain approval from the Office of Environmental Health and local fire and building authorities prior to undertaking any modifications of underground tank systems (i.e. pipeline repairs, tank removals, installation of new tanks, etc.)
5. Written records of all monitoring performed shall be maintained onsite by the operator and available for inspection for a period of at least one year from the date the monitoring was performed. This would include inventory reconciliation or tank gauging records, and vadose zone and/or groundwater monitoring records (if applicable).
6. The permittee must submit annual permit fees.
7. The permittee must submit an annual report documenting compliance with the above conditions within thirty (30) days of the anniversary of the permit issuance date. Facilities will also be inspected at least once annually for compliance with the above conditions. Please be advised that any violation of the above conditions may be cause for revocation of the permit to operate.
8. Additional conditions: _____

Please contact this office at (415) 363-4305 if you have any additional questions.

Date of Issuance: _____ Expiration Date: _____

Mark A. Keneally, Director
Office of Environmental Health

If that portion of Monitoring Alternative #8, as described within Section 2641 (8)(A)(ii), Article 4, Subchapter 16, Title 23, CAC has been selected by the permit applicant; that individual, or an authorized representative, must sign below in affirmation of the permittee's commitment to close or replace the above referenced underground storage tank(s) in accordance with the provisions of Subchapter 16, Title 23 CAC prior to August 13, 1988.

Department of Health Services
PUBLIC HEALTH DIVISION — Environmental Health



COUNTY OF SAN MATEO

590 HAMILTON STREET

• REDWOOD CITY

• CALIFORNIA 94063

BOARD OF SUPERVISORS
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MARGARET TAYLOR
DIRECTOR OF HEALTH SERVICES
383-4305

UNDERGROUND STORAGE TANK PROGRAM Routine/Annual Inspection Report Form

Date: _____ File Number: _____

Facility/Site: _____

Address--City: _____

Contact person: _____ Telephone Number: _____

UNDERGROUND TANK STATUS:

- | | | | |
|--|-----|----|-----|
| 1. Precision test performed this year: | Yes | No | N/A |
| 2. Current inventory/gauging records present on site: | Yes | No | N/A |
| 3. Inventory/gauging records within allowable error: | Yes | No | N/A |
| 4. Meters calibrated this year: | Yes | No | N/A |
| 5. Leak detectors, alarms, shut-off valves, electronic monitoring equipment, etc. checked this year: | Yes | No | N/A |
| 6. Annular space being properly monitored: | Yes | No | N/A |
| 7. Monitoring/Observation wells being properly monitored: | Yes | No | N/A |
| 8. Any unauthorized release: | Yes | No | N/A |

HASLE GENERATION STATUS: (if applicable)

- | | | |
|---|-----|----|
| 1. Recelpts available on site for hauled waste: | Yes | No |
| 2. All waste removed from site within 90 days: | Yes | No |
| 3. No mixing of incompatible waste occurring: | Yes | No |
| 4. Any new hazardous waste being generated: | Yes | No |

COMMENTS/CORRECTIONS NEEDED:

Use reverse side for additional comments/corrections

Inspection conducted by: _____ Title: _____

COUNTY OF SAN MATEO
Office of Environmental Health
Hazardous Materials Management Program
Underground Storage Tanks

QUARTERLY INVENTORY RECONCILIATION REPORT

Time Period _____ through _____
(month) (year) (month) (year)

Check One

_____ I hereby certify that daily inventory reconciliation/
weekly tank gauging records have shown measurements within
the allowable error limits as determined by the California
Underground Storage Tank Regulations, CAC, Title 23,
Chapter 3, Subchapter 16.

_____ Daily inventory reconciliation/weekly tank gauging records
have indicated discrepancies in excess of the allowable
error limits as stated below:

<u>Date</u>	<u>Tank</u>	<u>Error Limit</u> (gallons)	<u>Actual Error</u> (gallons)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**(Attach additional sheets as necessary)

Name of Facility: _____ Date: _____

Address: _____ City: _____

Signature: _____ Title: _____
(Person filing report)

VIOLATOR IDENTIFICATION (cont.)

Installer Certification Program

The certification of UST installers provides a measure of quality control with which a State UST program can improve regulatory compliance while conserving its program resources. The advantage of certification is that it reduces the need for a State inspector to be present at each UST installation or testing event. Several States certify UST installers as a means of providing quality control and ensuring that these activities comply with the regulations. One such certification program has been developed by Maine's Department of Environmental Protection (DEP). There are currently 250 certified installers in Maine. The certification process involves the following steps.

The first step involves the initial certification of an applicant. An installer must pass a written examination on the specific details and processes involved in proper tank installation. The installer applies for certification by paying a \$35 fee and submitting the application materials (Exhibit V-16) to the DEP. Materials to prepare for the test are available for an additional \$35, and the written test is given by DEP twice a year. Once passed, it is followed by a second, on-site test, and an additional fee of \$100 is collected. The installer has 6 months within which to take the second part of the test, but

DEP will grant a 3-month extension for valid requests. Once the installer has passed both parts of the examination, a certificate is issued and the installer is placed on DEP's recommendation list. The installer must then pay a final certification fee of \$100.

The second step requires the installer to renew the certificate every 2 years. This process involves completing additional training on technical expertise and paying a \$100 fee.

The third step involves the use of a noncertified installer. Prior to installation, a tank owner or operator is required to register the tank with DEP and identify the installer to be used. If the installer is not certified, the registration is invalid, and the owner or operator must find a new installer to complete the work. If a noncertified installer completes the work and either violation is discovered (failure to use a certified installer or failure to register the tank properly), the tank must be removed and reinstalled, usually voiding the manufacturer's original warranty and resulting in additional owner expenses and fines.

Maine's certification program has been successfully implemented over the 2-year period since its creation and has resulted in a more efficient utilization of UST program inspectors, as well as in a reduction in the number of poor-quality installations that are performed.

STATE BOARD OF CERTIFICATION FOR UNDERGROUND TANK INSTALLERS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
State House Station #17
Augusta, Maine 04333

Dear Applicant:

Enclosed are: 1) your application for certification as an underground petroleum storage system installer in the State of Maine, 2) experience data sheets, and 3) reference forms. The application form and experience data sheets should be returned directly to the Board at the above address, together with the application and examination fee of \$35.00. A personal check or money order payable to the "Treasurer, State of Maine" will be acceptable forms of payment.

Persons who currently hold a valid Master Oil Burner Technician License are exempted from the \$35.00 application and examination fee. A completed application must still be submitted. Please submit a photocopy of your oil burner license together with your application.

Copies of the examination study material are available at a cost of \$35.00. If you wish to receive a copy, please mark the appropriate box on the application form and enclose a check or money order made payable to the Treasurer, State of Maine.

Please note that your application must be signed in the presence of a Notary Public or a Justice of the Peace. To find a notary public or a Justice of the Peace in your area please call the Secretary of State's Office in Augusta at 289-3501.

It is your responsibility to obtain three professional and three personal references. Reference forms for this purpose are enclosed. You must submit them to appropriate people, and the reference forms should be returned to the Board directly by these people. It is your responsibility to see that these forms are completed and returned. Your application will not be complete until all references are received by the Board. All documents become the property of the Board upon submission, and will not be returned. If you write your address on the enclosed postcard, it will be mailed to you as soon as all of your application materials, including reference forms, have been received by the Board.

By submitting your application, you will automatically be kept informed of training sessions, exam content and format, and all pertinent installer certification information. Please allow at least 30 days processing time for review of your application before submitting further inquiry to the Board.

State of Maine
 Department of Environmental Protection
 State Board of Underground Oil Storage Tank Installers
 State House Station #17
 Augusta, Maine 04333

APPLICATION FOR CERTIFICATION
 AS AN UNDERGROUND TANK INSTALLER

Application and Examination Fee: \$35.00
 Examination Study Material: \$35.00 Yes ☐ No ☐
 (Remit by Check or Money Order Only and
 Payable to: Treasurer, State of Maine)

For Office Use Only
Received(Date) _____
Money Received _____
Application # _____
Certification # _____

PLEASE PRINT OR TYPE AND SIGN

1. FULL NAME		Last	First	Middle
2. Permanent Residence: Street & Number		City		State
3. Business Address:		City		State
4. Phone: () _____ () _____ Residence Business		5. Birthdate: _____ / _____ / _____ Month Day Year		
6. Send Mail To: ____ Business ____ Residence	7. Place of Birth: _____ City State		8. Social Security #: _____	
9. List other professional registrations and licenses that you hold from a governmental body in or out of the State of Maine (for example an electrician's or plumber's license).				
Type of License	License No.	Issuing Agency		Date Issued
10. Have any of the above licenses or registrations ever been suspended or revoked? ____ Yes ____ No. If yes, state circumstances: _____				

11. List any schools or training seminars concerning tank installations which you have attended.

Title	Presented by	Date(s)

12. With whom did you most recently apprentice as a tank installer?

Business name: _____

Address: _____

City, State, Zip: _____

Person who supervised you: _____

Period of apprenticeship: From: _____ MO/YR To: _____ MO/YR

13. Number of years experience as a tank installer: _____

14. Approximate number of tank installations you have

	<u>Supervised?</u>	<u>Participated In?</u>
Bare/asphalt coated steel	_____	_____
Fiberglass	_____	_____
Fiberglass coated steel	_____	_____
Cathodically protected steel (STI-P3)	_____	_____
Dual containment (excavation liner)	_____	_____
Dual containment (double wall tank)	_____	_____
TOTALS:	_____	_____

15. Approximate number of piping installations you have:

	<u>Supervised?</u>	<u>Participated In?</u>
Black iron/galvanized	_____	_____
Copper	_____	_____
Fiberglass	_____	_____
Cathodically protected steel	_____	_____
Dual wall	_____	_____
TOTALS:	_____	_____

16. Professional Experience Related to Tank Installation: Begin with present position and proceed to prior employers. List details on the Experience Data Sheets provided.

Complete Experience Data Sheet for each entry.

Years Employed		Name of Employer	Address
From	To		

17. List the names and addresses of at least three people (e.g. employer, supervisors), familiar with your work as a tank installer to whom you have sent reference forms.

Name	Address	Telephone #

18. List the names and addresses of at least three people (not employers and not relatives) who can attest to your character and business integrity, and to whom you have sent reference forms.

Name	Address	Telephone #

19. If you have been employed as an underground oil storage tank installer for at least two years prior to June 28, 1985, please indicate your preferred method of testing below. You need only complete ONE of these tests:

- ☐ Oral test based on rules and regulations of the Board
☐ Written test based on rules and regulations of the Board
☐ Successful completion of an underground storage system installation under the supervision of the Board or its representative. (Additional fee for on site examination: \$100.00)

NOTE: If you have NOT been employed as an underground storage tank installer for at least two years prior to June 28, 1985, you must pass BOTH a written test AND successfully complete an underground storage system installation under the supervision of the Board.

NOTE: Initial application fee includes the fee for the first oral or written exam. Written or oral re-examinations will cost an additional \$35.00. Each on site exam will cost \$100.00.

20. I understand that police records will be checked to determine whether I have a criminal record. _____ (initials)

21. I understand that I may be required to supply additional data if requested by the Board. _____ (initials)

I, _____, hereby certify that the information contained on this application and attached Experience Data Sheets is true and correct to the best of my knowledge.

Signature of Applicant: _____

Date: _____

State of _____

County of _____

Subscribe and Swore to before me this

____ day of _____, 19____

Notary Public or Justice of the Peace

My Commission expires _____

**MAINE BOARD OF UNDERGROUND TANK INSTALLERS
PERSONAL AND PROFESSIONAL REFERENCE FORM**

Department of Environmental Protection
State House Station #17
Augusta, Maine 04333

Applicant's Name: _____

Address: _____

Dear Recipient:

The above named applicant is submitting an application to be certified by the Maine Board of Underground Tank Installers. Certification by this Board will authorize the applicant to be directly responsible for the construction of facilities which will store hazardous and toxic petroleum products. In many cases these storage systems will be in close proximity to homes and present or future ground water supplies. You have been selected by the applicant as a person who can attest to his/her professional competency and/or personal integrity. Please do not take this request lightly. The livelihood of the applicant and the health and safety of Maine's people and environment depend on your honesty and integrity. Please return this form directly to the Board at the above address.

PLEASE PRINT OR TYPE

My name: _____

Address: _____

Phone: () _____

My Relationship with the applicant has been that of:

_____ Employer	_____ Supervisor
_____ Co-worker	_____ Customer
_____ Friend	_____ Other (Please describe: _____)

	Excellent	Good	Poor	Do not know
Character - personal reputation				
Quality of professional work				
Technical knowledge and ability				
Ability to organize projects				

IF YOU ARE A PROFESSIONAL REFERENCE, PLEASE INDICATE:

How long you worked together: _____ mo/yr to _____ mo/yr

Business or company you work(ed) for:

Working relationship, type of work, and comments:

Do you consider this applicant to be qualified for certification as an underground oil storage system installer? _____ Yes _____ No

IF YOU ARE A PERSONAL REFERENCE, PLEASE INDICATE:

How long you have known applicant: _____ mo/yr to _____ mo/yr

Your impressions of the conscientiousness, capabilities and personal integrity of the applicant:

Please attach an additional sheet if necessary

Signed: _____

Date: _____

If you are a certified tank installer, your number: _____

MAINE BOARD OF UNDERGROUND TANK INSTALLERS
EXPERIENCE DATA SHEET

office use only
info verified:
init: _____

Your name: _____ Data sheet ____ of ____

PLEASE PRINT OR TYPE:

Describe your underground petroleum storage system experience in the box provided below. Use one data sheet for each employer. Be brief, but supply the pertinent facts concerning the degree of responsibility, the nature of the work you performed, and the types of systems you have installed.

Supervisor's current telephone number is mandatory.

DATES: from: _____ to: _____

EMPLOYER: _____
ADDRESS: _____
TELEPHONE: _____

SUPERVISOR'S NAME: _____
PRESENT ADDRESS: _____
CURRENT TELEPHONE: _____

OIL/111/5/87

VIOLATOR IDENTIFICATION (cont.)

Audit Inspection Form

One means of informing the regulated community of requirements and stimulating voluntary compliance that does not appear to have been given much attention is the self audit. The self-audit form, which is a detailed checklist of requirements, would take the auditor (e.g., the owner or operator, inspector, or contractor) step by step through a review of the status of existing and removed tanks. An adequately detailed form could

be sent to owners or operators as part of compliance outreach and could also be used by inspectors. In addition, States could use some form of a self-certifying audit to supplement formal inspections, particularly for facilities with a good history of compliance.

EPA (with its contractor, Roy F. Weston, Inc.,) developed a prototype of an UST audit in 1985. This audit form (Exhibit V-17) could be easily updated with new information to reflect current State and Federal UST regulations, or refined to meet State or local needs.

**SAMPLE AUDIT CHECK LIST
FOR UNDERGROUND STORAGE TANKS**

Facility	Compliance Category	Auditor(s)	Date						
REGULATORY REQUIREMENTS	AUDIT QUESTIONS	ANSWER						AUDITOR COMMENTS	
		Yes	No	N/A	Based On:				
					Inquiry	Observation	Test		
1. A master list of all above-ground and underground storage tanks should be maintained at each facility (good management practice).	<ul style="list-style-type: none"> Does the facility have a master list of all above-ground and underground storage tanks? Does the master list contain information on: <ul style="list-style-type: none"> - Tank capacity? - Tank construction material and type of internal/external protection? - Tank age? - Dates of integrity testing? - Dates of service/repairs? - Leak detection systems in place? Is a map available that shows the location of all tanks and piping? (The auditor should use this map for reference during the audit.) 								

Facility	Compliance Category	Auditor(s)	Date						
REGULATORY REQUIREMENTS	AUDIT QUESTIONS	ANSWER						AUDITOR COMMENTS	
		Yes	No	N/A	Based On:				
					Inquiry	Observation	Test		
<p>2. Facilities with underground storage tanks for hazardous substances or petroleum products are subject to notification requirements (40 CFR 280).</p> <p>(NOTE: Heating oil tanks, septic tanks, and certain other tanks are exempt from notification requirements. Refer to definition of UST.)</p> <p>3. Facilities with underground tanks taken out of operation after Jan. 1, 1974, but still in the ground should provide notification to the state by May 1986. Notification should include known information on:</p>	<ul style="list-style-type: none"> Was EPA Form 7530-1 "Notification for Underground Storage Tank in Use" or state form prepared and submitted to the designated state or agency by May 8, 1986? Are copies of the notification forms maintained at the plant? Is the information on the notification forms the same as that on the facility's master list of tanks? Record any inconsistencies. Have any underground tanks been taken out of service since Jan. 1, 1974? Are any abandoned tanks still in the ground? 								

Facility	Compliance Category	Auditor(s)	Date						
REGULATORY REQUIREMENTS	AUDIT QUESTIONS	ANSWER						AUDITOR COMMENTS	
		Yes	No	N/A	Based On:				
					Inquiry	Observation	Test		
3. (continued) - Date of deactivation; - Substances in the tank; - Tank size and type; - Location of tanks (40 CFR 280)	<ul style="list-style-type: none"> If so, has EPA Form 7530-2, "Notification for Underground Storage Tank No Longer in Operation," or state form been submitted to the designated state agency? 								
4. Facilities that bring underground storage tanks into use after May 8, 1986 must, within 30 days of bringing such tanks into use, notify designated state or local agencies (40 CFR 280.3(c)).	<ul style="list-style-type: none"> Are there any plans to install a new underground tank at the plant? If so, is there a formal procedure to ensure that notification (registration) of new underground tanks will be made to the state within 30 days of bringing the tank into use? EPA Form 7530-1, "Notification for Underground Storage Tank in Use," or state form should be used for this purpose. 								

Facility	Compliance Category	Auditor(s)	Date						
REGULATORY REQUIREMENTS	AUDIT QUESTIONS	ANSWER						AUDITOR COMMENTS	
		Yes	No	N/A	Based On:				
					Inquiry	Observation	Test		
<p>5. Facilities may not install any new underground tank unless it has been cathodically protected or designed to prevent any release (RCRA Sect. 9004).</p> <p>(NOTE: This provision known as the "bare steel tank" prohibition will remain in effect until EPA issues performance standards for new underground tanks (scheduled for Feb. 1987).)</p>	<ul style="list-style-type: none"> Have all new steel underground tanks installed after May 1985 been: <ul style="list-style-type: none"> Cathodically protected? Constructed of non-corrosive material (e.g., fiberglass)? Clad with a non-corrosive material? OR Designed to prevent release? 								
<p>6. Inventory control procedures should be in place for all underground storage tanks (good management practice).</p> <p>(NOTE: The 1984 RCRA Amendments require EPA to issue leak detection, prevention, and corrective action regulations by Feb. 1987.)</p>	<ul style="list-style-type: none"> Are inventory and use records kept for all UST? Does the facility: <ul style="list-style-type: none"> Measure tank levels with a gauging stick on a daily basis? Obtain readings from meters at dispensers? Calculate quantity of material delivered to the tank? 								

Facility	Compliance Category	Auditor(s)	Date						
REGULATORY REQUIREMENTS	AUDIT QUESTIONS	ANSWER						AUDITOR COMMENTS	
		Yes	No	N/A	Based On:				
					Inquiry	Observation	Test		
6. (continued)	<p>- Balance these numbers against each other to identify unexplained losses or additions?</p> <ul style="list-style-type: none"> • Are calculations recorded in a permanent log? • Review inventory control records to verify completeness and frequency of operation. • Are any discrepancies noted? • If so, have follow-up investigations been made? <p>(NOTE: Pressure testing with air or other gases to detect tank leaks is <u>not</u> recommended because of severe danger of tank rupture.)</p>								

Facility	Compliance Category	Auditor(s)	Date						
REGULATORY REQUIREMENTS	AUDIT QUESTIONS	ANSWER						AUDITOR COMMENTS	
		Yes	No	N/A	Based On:				
					Inquiry	Observation	Test		
6. (continued)	<ul style="list-style-type: none"> Have releases been reported to state and EPA? Have corrective actions been taken? <p>(NOTE: NEPA 329 provides additional guidance on UST leakage.)</p>								
7. Underground metallic storage tanks and pipings with cathodic protection must be routinely tested (good management practice).	<ul style="list-style-type: none"> Does the facility have an underground metallic storage tank with cathodic protection? If not, go to Item 8. For impressed current systems: <ul style="list-style-type: none"> - Is voltage checked monthly and recorded in a log? - Do records indicate the voltage is greater than -0.85, but not more than -3.0 volts? For sacrificial anode system: <ul style="list-style-type: none"> - Is the voltage checked bi-annually? 								

Facility	Compliance Category	Auditor(s)	Date						
REGULATORY REQUIREMENTS	AUDIT QUESTIONS	ANSWER						AUDITOR COMMENTS	
		Yes	No	N/A	Based On:				
					Inquiry	Observation	Test		
7. (continued)	<ul style="list-style-type: none"> - Do records indicate the voltage is greater than -0.85, but not more than -3.0 volts? 								
8. Regular inspections of UST should be conducted (good management practice).	<ul style="list-style-type: none"> • Are failures and leak detection reported? • Inspect underground storage tank sites. • Is there evidence of potential leakage, such as: <ul style="list-style-type: none"> - Strong odors? - Presence of surface stains? - Presence of stressed vegetation? - Presence of liquids in secondary containment system (if applicable)? - Evidence of spills (saturated and darkened soil, stained concrete, soft spots in asphalt)? - Damaged fill pipes? 								

Facility	Compliance Category	Auditor(s)	Date						
REGULATORY REQUIREMENTS	AUDIT QUESTIONS	ANSWER						AUDITOR COMMENTS	
		Yes	No	N/A	Based On:				
					Inquiry	Observation	Test		
8. (continued)	<ul style="list-style-type: none"> Does the facility have a leak detection system in place? If so: <ul style="list-style-type: none"> Is the system routinely calibrated in accordance with manufacturer's instructions? Does the system show signs of tampering? Does the system indicate potential leakage? 								

VIOLATOR IDENTIFICATION (cont.)

Petroleum Tank Release Investigation Report

The initial stages of implementation of nationwide UST regulations are expected to lead to the discovery of numerous potential leaks. For many States in the process of building or expanding UST programs, the need to respond to notice of releases, to investigate, and, in some cases, to implement corrective action will place a serious strain on resources. Minnesota's response-oriented UST program has developed a resource-saving approach to this problem by encouraging and assisting owners or operators to undertake the basic work of tank release investigation and remedial design (Exhibit V-18). A series of generic forms provide comprehensive guidance to the owner or operator to gather information where possible and to contract for professional services where necessary, yet keep oversight in the hands of Minnesota's Pollution Control Agency (MPCA).

The contents of the Minnesota Petroleum Tank Release Investigation Report are outlined below.

- Part I requests detailed background information pertaining to the property and the release itself (Exhibit V-19).
- Part II is less detailed but sets out the type of technical data (e.g., well-boring data, soil data) that might be needed in order to describe the actual or potential impacts of the release (Exhibit V-20).
- Part III combines all the information and considers the range of corrective actions indicated for the site (Exhibit V-21).

The MPCA selects the corrective action option but uses input from the owner or operator's consultant, thus, giving the responsible party involvement in the process. The need for oversight of the corrective action is often minimized if the remedy is accepted by a cooperative responsible party.

November 2, 1987

Contents of
Petroleum Tank Release
Investigation Report

Federal and State laws require persons responsible for a release of petroleum from a tank to conduct corrective actions adequate to "minimize, eliminate, or clean up a release to protect the public health and welfare or the environment".

A remedial investigation must yield sufficient information to select and design an adequate corrective action. The corrective action must not only deal with current pollution, but must also protect against future on and off site problems. This document describes the information that must be contained in a remedial investigative report and corrective action proposal.

The hazards which must be addressed include:

- fire and explosion from product and product vapor;
- contamination of drinking water;
- contamination of soil, ground water or surface water.

Investigating and correcting a release of petroleum from a tank can be simple and straightforward or extremely complex depending upon the site and its soil and ground water conditions, the amount and type of product released, and the current and future uses of the site and neighboring area. These site specific conditions make it impossible for the Minnesota Pollution Control Agency (MPCA) to specify a definite number of test borings or a certain type of water analysis to be done in all cases. Rather, this document lists the conditions and items of information that an investigation must address in order to determine corrective action which assures protection of the public's health and safety and the environment. Presented below are outlines of "Parts I, II, and III" of an investigation report. Reports must contain this or equivalent information to be considered acceptable to the MPCA staff. If some of the required information cannot be found you should include a statement to that effect in the report. If you believe that some of the information is not relevant to your site you should say so and describe why it is not relevant.

Part I of the report (Background Information) must contain descriptions of the site, the area around the release site, the product and the tanks. Much or all of this information can be gathered by responsible persons. The information should be as detailed as possible and may be submitted separately from and before, Parts II and III.

Part II of the report (Technical Data and Conclusions) must contain detailed descriptions of soil, water, and chemical conditions at the release site. Few responsible persons will have sufficient expertise and experience to gather and interpret this information. Certain parts must be done by a certified or registered person (for example, monitoring wells must be constructed according to the State well code by licensed well drillers or registered civil or geologic engineers).

November 2, 1987

Part I.
BACKGROUND INFORMATION

A. Legal description of property:

B. History of site ownership and operation since at least the point at which petroleum releases did or could have occurred on the property:

1. name and current address of all current owners and operators
2. name and current address (if known) of all past owners and operators if you are alleging multiple responsible parties
3. years of ownership/operation
4. general activities conducted at site by each owner/operator
5. general construction history of site

C. Map or maps and descriptions appropriate in scale and scope showing:

1. your building
2. adjacent and nearby buildings
3. paved (concrete or asphalt) areas
4. property line
5. location of above and underground tanks and associated lines, pumps and dispensers
6. location of former tanks
7. soil boring locations (if done)
8. monitoring well locations (if done)
9. underground utilities on and adjacent to site (sewer, water, telephone, electric)
10. basements and tile drain and sump systems on and adjacent to site
11. street names
12. major pumping wells and municipal wells (get info from city)
13. private wells (city may know this)
14. water bodies (rivers, ponds, lakes)
15. surface elevations from surveys or topo maps or city, elevation relative to nearby landmark acceptable
16. north arrow and map legend (scale, such as 1 inch = 100 feet)

D. Tank and Leak Information:

1. age of all existing and previously removed tanks on site
2. size of all tanks on site (diameter, length, gallons)
3. tank construction material of all tanks on site (construction prints if available)
4. present contents of all tanks on site
5. previous contents of all tanks on site
6. type and locations of product pumps, piping, and dispensers
7. method and results of product inventory reconciliation (describe and attach charts, etc.)
8. corrosion protection on tanks and lines (yes/no and description)
9. type and location of leak detectors
10. type of fill under and around tanks and lines (clay, sand, etc.)
11. type of tank anchors (if any)

November 2, 1987

Part II
Technical Data and Conclusions

The requirements for Part II are described in less detail. The amount of work required at a site depends on site specific conditions, the judgment of a responsible person's consultant, and the MPCA staff. Part II should update Part I if new information is discovered and the two parts are submitted separately.

The initial goal of a Remedial Investigation (RI) is to determine whether free petroleum product is present on the water table. You may use excavations, borings, or monitoring wells to identify the amount of petroleum present in the release area. The MPCA must be notified immediately if free product is discovered.

The RI report must describe the actual and potential impacts of the release using the following information:

- A. Site map showing all sample locations:
 1. borings
 2. monitoring wells
 3. recovery wells (include Minnesota Unique Well Number for all wells)
 4. vapor survey points
 5. other samples
- B. Soil, and bedrock technical information and map(s) from published reports or work done on site such as:
 1. published or generally known information
 2. information generated by this investigation
 - area soil (type, thickness, classification, etc.)
 - area bedrock (type, thickness, formation name, etc.)
 - boring logs, (description, methods, odors, blow count etc.)
 - soil characteristics (grain size, sorting, origin, texture, permeability, classification, etc.)
 - observed contamination (visual, odors, vapor survey results)
 - contaminant analytical results
 - bedrock (depth, type, etc.)
- C. Ground water technical information and maps such as:
 1. general description of area aquifers (use published or generally known information)
 - hydraulic characteristics
 - use
 2. observation of water table aquifer on site
 - depth to water table
 - surveyed elevations
 - contours
 - direction of ground water flow
 3. perched conditions
 4. connections to other aquifers
 - potential connections
 - evidence of connection/no connection at site

November 2, 1987

Part III
Corrective Action Plan

Your Remedial Investigation will identify those corrective actions which will protect health, welfare and the environment. Potential corrective actions may include combinations of:

1. do nothing
2. soil excavation and treatment/disposal
3. in place soil treatment
4. product recovery
5. ground water removal and treatment
6. ground water gradient control
7. vapor control measures
8. drinking water supply replacement
9. resident relocation

Site maps, equipment diagrams, specifications, calculations etc. must be presented which demonstrate that the proposed corrective action protects health, welfare and environment. Only very limited detail is provided in this document because corrective actions are very site specific. Selection of corrective action will depend on the responsible person's consultant and review by the MPCA staff.

ENFORCEMENT RESPONSE

LUST Priority Rating Scheme

A primary concern for States in carrying out enforcement responses is inadequate resources for responding to all tank releases and violations that may threaten human health and the environment. Because these resource constraints prevent them from addressing all releases and violators, States may develop a system for rating enforcement cases to determine where resources are needed most.

The attached sample (Exhibit V-22) indicates how New Mexico determines the priority of cases of releases from USTs. The rating system evaluates different factors in each case, such as type of product released, effects on the water supply, potential for toxic vapors and explosivity, and mitigating actions taken. Each factor is individually rated, and the ratings for all factors are totalled. The resulting score is used to determine the significance of that case with respect to other cases.

The New Mexico UST staff has developed the rating scheme to address the cases both in the short term and the long term. In the short term, by

ranking the release cases, the staff can evaluate the severity of the environmental threat and thus determine which cases require the most immediate corrective actions. Sites that are quickly addressed are those that threaten ground water and its users or that result in a concentration of explosive or toxic vapors. Thus, the State can use its limited staff to respond to releases where they are most needed.

In the long term, New Mexico uses the rating scheme as a means of determining the type of enforcement response it will take. In general, more time and effort are devoted to negotiations with the responsible party in high-ranking cases to bring about remedial action. For lower-ranked cases, the State attempts to bring about compliance with a minimum expenditure of State resources. Negotiations are accomplished by sending the responsible party (RP) a form letter that verifies the violations and requires the RP to conduct investigations of the environmental damage. In addition, the RP must submit a proposal for remedial actions to be taken. For cases that pose a more significant threat to the environment, the State initiates formal negotiations with the RP to achieve a settlement agreement.

LUST PRIORITY RATING SCHEME

I. TYPE OF CONTAMINANT

- (10) crude oil, natural gas condensate, gasoline, JP-4, Jet B Fuel
- (5) diesel, kerosene fuel, JP-5, Jet A or Jet C fuel,
- (1) heavier petroleum products
- (1-10) other, sliding scale based on contaminant hazard characteristics

II. IMPACTS TO WATER SUPPLY

- (A) YES, a water supply has been affected
 - (40) public well affected OR >10 private wells affected OR plume is less than 100 feet from a non-community water supply well OR plume is less than 300 feet from a community water supply well
 - (30) 6 to 10 private wells are affected or immediately endangered OR the contaminated aquifer is in a sole source setting
 - (25) 6-10 private wells affected, but alternate water supply available.
 - (20) 1 to 5 private wells affected or immediately endangered OR contaminant plume is 100 feet from a private well OR surface water is endangered
 - (15) 1 to 5 private wells affected, but alternate water supply is available (able to drill an uncontaminated well on-site, or being able to connect to a city water supply system), OR private irrigation well contaminated.
 - (10) farm irrigation well affected, but no immediate threat to drinking water supply
- (B) NO, a water supply has not been contaminated
 - (20) contamination is imminent
 - (10) contamination potential is unknown but probable
 - (5) contamination potential is unknown but possible
 - (0) usable groundwater is unlikely to be affected

III. TOXIC VAPORS IN EXCESS OF HEALTH STANDARDS OR EXPLOSIVITY

- (20) benzene (measured as benzene or benzene equivalents using MSA sample-air tubes, hNU, or equivalent) in excess of 1 ppm in an area where people are exposed to vapors 8 hours or more per day OR explosivity measurements of > 60% LEL using MSA gascope or equivalent in an area other than utility corridors (ie. any office, house, or other building including crawlspaces and basements).
- (15) benzene levels in excess of 1 ppm (as measured above) in an area where people are exposed occasionally or daily for less than 8 hours a day (not including utility corridors).
- (10) benzene levels in excess of 1 ppm or explosivity measurements greater than 60% LEL in utility corridor with 3 or more access points. Add 5 points if damage to telephone cables or other property is occurring.
- (5) benzene levels in excess of 1ppm or explosivity levels greater than 60% LEL in a utility corridor with less than 3 access points. Add 5 points if damage to telephone cables or other property is occurring.

IV. IS LEAK CONTINUING?

- (10) yes
- (3) maybe
- (0) no

V. HAS THERE BEEN ANY MITIGATION?

- (10) no
- (5) Settlement Agreement signed, cleanup is underway OR no Settlement Agreement required, cleanup is underway. (cleanup means actual pumpage of groundwater or free product or active bioreclamation system as well as active vapor remediation where applicable).
- (0) yes -- enough to protect public health and ground water quality (ie. cleanup complete).

VI. NUMBER OF GALLONS LOST

- (10) >20,000 gallons
- (8) 10,000 - 19,999 gallons
- (6) 5,000 - 9,999 gallons
- (4) 2,000 - 4,999 gallons
- (2) 1,000 - 1,999 gallons
- (1) < 1000 gallons
- (5) amount unknown, this should be updated as more info becomes available

revised 12/22/87 ML

LUST PRIORITY RATING WORKSHEET

.....
FACILITY NAME _____ LOCATION _____
.....

Record the score and the source of the information for each question, as well as any comments.

I. TYPE OF CONTAMINANT _____

II. IMPACTS TO WATER SUPPLY _____

III. TOXIC VAPORS OR EXPLOSIVITY _____

IV. IS LEAK CONTINUING? _____

V. MITIGATION _____

IV. NUMBER OF GALLONS LOST _____

TOTAL _____

.....
Reviewed by _____ Date _____

Updated by _____ Date _____

ENFORCEMENT RESPONSES (cont.)

Expedited Enforcement Procedures

The success of an UST regulatory program is largely dependent on the ability of UST officials to both encourage voluntary compliance with the regulations and to bring violators into compliance without investing the majority of the program's resources. Many States have found that traditional enforcement procedures are often too time-consuming and resource-intensive for many of the violations discovered, particularly for cases in which the violation is relatively minor. As a result, some States may want to develop expedited enforcement procedures as part of their UST compliance program. It should be noted, however, that expedited procedures are most effective when used as a complement to existing administrative, civil, and criminal authorities rather than as a replacement for more formal enforcement responses.

Several of the State UST officials interviewed expressed interest in using these types of procedures. However, with some exceptions, such as Maryland's use of Site Complaints in their UST program and Ontario's use of Offense Notices to enforce a variety of civil regulations, States have not yet developed expedited procedures for their UST programs.

This section will present several approaches to streamlining enforcement methods. Furthermore, the sample forms in this section demonstrate that expedited procedures can be modified to fit different types of compliance programs.

What are Expedited Enforcement Procedures?

As the name implies, expedited enforcement procedures are techniques that have been developed to enhance the overall compliance program by simplifying the enforcement process and improving timeliness. Some forms of expedited enforcement procedures that might be useful in an UST program are:

- On-Site Warning Notices,
- Site Complaints,

- Field Citations, and
- Short-Form Notices of Violation (NOVs).

These techniques are similar in that the notices are issued directly by the inspector or regulatory agency without going through the State's judicial system. A warning notice is issued by an inspector at the site of the violation to inform the owner or operator of the violation and of the appropriate action necessary to correct the violation. However, penalty assessments are not associated with the notice. Like the on-site warning notice, a site complaint is issued by an inspector and does not include a penalty assessment. However, a site complaint is a formal administrative order that has been preauthorized by the appropriate State official. A field citation is another type of formal administrative order presented in a simplified form, similar to a traffic ticket. A penalty is often assessed when a field citation is issued. A short-form notice is issued by the regulatory agency after reviewing an inspection report, and a penalty is often assessed at that time. An example and discussion of each of the expedited enforcement procedures as well as variations on each procedure are presented later in this section.

How Can Your UST Program Benefit from Using Expedited Procedures?

The primary goals of expedited enforcement procedures are to enable UST officials to address more violations and to reallocate resources to new or more serious cases. These procedures are relatively easy for the inspector and the violator to use, and they require less of both parties' time than formal judicial enforcement actions. Thus, a program's enforcement resources are conserved for contested or serious violations. Implementing a formal and standardized method for responding to violations also may encourage owners and operators to comply with all the regulations because a precedent has been established for enforcing a wide range of violations.

When Should You Use Expedited Procedures?

Expedited enforcement procedures generally are designed to address relatively minor violations. These procedures are best used when the actual environmental harm is small and the violation is

easily correctable, as in the case of reporting violations. In addition, the factual elements should be simple and easily visible in the field so that inspectors spend few resources identifying the violation. Finally, there should be no evidence of criminal intent to avoid compliance with environmental regulations. In the absence of these circumstances, traditional civil or criminal enforcement procedures would still be used.

Most regulatory programs that use expedited procedures have established set penalties for specific violations. These penalties seem to be most effective when the amount is relatively small (e.g., \$50 to \$500 per violation) because the violator is more likely to pay the fine and correct the violation than to contest the violation. However, States should not be held back by attempting to precisely match each violation with a penalty. Instead, determining appropriate fines may be an ongoing process; the level of the fine should encourage the violator to come into compliance rather than contest the violation. Thus, fines may need to be adjusted as the program gains experience.

Expedited enforcement procedures are only part of an enforcement program. A regulatory agency should retain the right to enforce violations using full civil and criminal penalties authorized by statute. Therefore, violators actually benefit by complying with expedited procedures rather than risk being assessed the full civil penalty, which may be as much as \$10,000 to \$25,000.

What Types of Support Material Would You Need to Develop?

To effectively implement an expedited enforcement procedure as part of its compliance program, a State would need to prepare outreach materials to inform the regulated community about the requirements. Particularly in the early phases of an UST program, it is likely that lack of knowledge would be a primary reason for noncompliance. Thus, having detailed explanations of the program requirements, and suggestions on how to comply with those requirements (e.g., a list of certified installers), would help violators come into compliance. In addition, violators would need to be informed of their legal rights when issued a citation. The appeals procedure should be clearly stated on

the citation or notice and in outreach material to fully inform the violator of his/her options.

To ensure the quality and consistency of the inspection process, States would also need to develop an inspectors' training guide and a standardized inspection manual. An inspectors' training guide would detail the appropriate inspection techniques and provide guidance on recognizing signs of environmental contamination. A standardized inspection program would establish the procedure for conducting UST investigations to ensure consistency within the inspection program.

Comprehensive inspector training is particularly important to educate UST inspectors about the liabilities associated with their role as technical advisor. It is often difficult for inspectors to separate the role of inspector from that of technical advisors. If a State program allows its inspectors to render detailed advice on how an owner or operator can comply with the regulations, inspectors must have the necessary technical qualifications and background to provide that information.

What Types of Statutory Authority Would You Need?

The expedited enforcement procedures presented here are techniques that have been based on statutory authorities commonly found in regulatory programs. Those States that already have the statutory authority and administrative procedures to issue administrative orders and assess penalties could rapidly adopt the techniques presented here. The penalty authority would neither mandate a minimum penalty nor restrict discretion on assessment of fines. If the field citation were used, the State would be able to delegate enforcement authority to the inspector. However, the State agency may prefer to use a short-form NOV as an alternative to delegating the authority to the inspector; the NOV may only be issued under the signature of the regulatory agency's director.

An appeals procedure must also be provided. The forum could range from administrative hearings to civil or criminal trials. The State agency would need to provide an appeals proceeding for any case in which it has the power to issue orders and penalties; however, the less cumbersome the appeals procedure, the more compatible it is with

expedited enforcement procedures. That is, a State might not find an advantage to using a field citation if an appeal were forced to compete on a crowded civil court docket and placed demands on the Attorney General for prosecution.

While relatively few States might currently have the ideal statutory basis for rapid adoption of the expedited enforcement procedures listed here, many States have some of the requisite authorities and could tailor these procedures or develop similar alternatives in order to enhance UST compliance programs. For example, the short-form NOV modified into a consent agreement will have the same effect on many violators as the standard short-form NOV. States are encouraged to obtain authorities where possible, but, as always, should consider developing expedited enforcement approaches as part of their UST compliance program. The following sections describe four expedited and enforcement techniques in detail.

On-Site Warning Notice

What is It? An on-site warning notice is issued by an inspector at the site of the violation to inform the owner or operator of a violation and the appropriate action necessary for compliance (Exhibit V-23). Although a penalty would not be assessed at this time, an on-site warning notice serves as a formal record that a particular facility has been cited for a violation. This initial notice could be used by the implementing agency to impose further sanctions if the violation were not corrected or if it were repeated.

When Would You Use It? The on-site notice may be particularly useful during the first year of regulation as a method of informing the regulated community about the UST requirements and the penalties for noncompliance. In general, some violations that are common in the initial stages of a regulatory program (e.g., failure to notify the implementing agency of an existing tank or failure to obtain an operating permit) may warrant an on-site warning notice. Because these types of violations are often due to a lack of knowledge about the program, State agencies may want to use on-site notices to emphasize the importance of compliance without assessing a penalty.

Inspectors may also use an on-site notice when the violation is relatively minor or when there are mitigating circumstances resulting in non-compliance. Thus, an UST inspector may use an on-site notice as a positive gesture to promote compliance.

What Types of Outreach Materials Would You Need? The on-site notice is most effective when accompanied by a detailed explanation of the requirements and suggestions on how to comply (e.g., for closure violations, the State agency may provide names of certified disposal sites). The violator should also be informed of his/her responsibilities and the penalties for continued noncompliance.

Site Complaint

What is It? While the on-site warning notice is usually directed at achieving compliance with relatively minor violations, a similar enforcement procedure may be used for more serious violations. One such procedure is the use of a site complaint. The site complaint is often a formal administrative order, usually without a penalty assessment. Because it is a formal order, the site complaint must be signed by an appropriate State official and time must be allowed for an appeal of the order. This procedure can be adapted into an expedited procedure if the appropriate State official preauthorizes the blank citation by signing the form and designating the inspector to fill out the details of the violation during the inspection.

When Would You Use It? The State of Maryland has developed a site complaint as part of its UST compliance program. The site complaint is used to promote voluntary compliance and to serve as formal record of the violations discovered. A penalty is not assessed. The site complaint, therefore, is used to inform owners and operators that a violation has been discovered. By issuing a formal order, inspectors emphasize the seriousness of noncompliance while encouraging owners and operators to correct the violation without being subject to a penalty assessment.

Maryland's site complaint includes a cease-and-desist order that allows Maryland officials to order an UST facility to stop a tank installation or to

stop using a tank that is suspected of leaking. This type of authority provides UST officials with the ability to take immediate action necessary to protect human health or the environment. Exhibit V-24 presents a sample site complaint, modeled after the one used by Maryland officials.

Field Citation

What is It? A field citation is a simplified administrative order issued by an inspector at the site of the violation (Exhibit V-25). The citation often resembles a generic "traffic ticket" and may include a predetermined fine for a specific violation and an explanation of the appeals process. The violator has the option of paying the fine and correcting the violation, or requesting a hearing.

When Would You Use It? A State would generally use field citations for relatively minor, easily corrected violations. In addition, the violations should be easily visible so that the inspector would not have to invest a lot of time identifying the violation, and there should be no evidence of criminal intent to hide noncompliance. In these cases, an inspector may issue a field citation with a relatively small penalty, thereby encouraging the violator to pay the fine and correct the violation rather than contesting the citation. However, when more serious violations are discovered, inspectors may use other enforcement techniques, such as a formal Notice of Violation.

A standard field citation may also be used as a warning to inform an owner or operator of a violation and emphasize the penalties for noncompliance without actually assessing penalties (Exhibit V-26). A warning field citation would be the same form as the standard citation with the distinction that it is a warning and that there is no penalty attached. This approach may be particularly useful during the initial stages of regulation when many violations may be attributed to lack of knowledge about the program. By using a standard citation, an inspector may emphasize the importance of compliance while promoting good faith between the State agency and the owner or operator. The warning field citation can also serve as a formal record that a violation was observed at a particular facility.

What Do You Need to Implement a Field Citation Program? To implement a field citation program, the State agency will need to have administrative order authority to assess penalties, and the ability to delegate that authority to the inspector. In addition, outreach materials would need to be developed to explain the appeals procedure should a violator wish to contest the citation. The District of Columbia has established a field citation program for enforcing many civil regulations under its Civil Infractions Program. District officials also plan to use their standard field citation, which served as the model for Exhibits V-25 and V-26, for UST violations once their program has been developed. The District has developed comprehensive outreach materials that detail their Civil Infractions Program and clearly answer common questions that a recipient of a citation might have. One example used for their program is presented in Exhibit V-27.

Because there are a large number of possible UST violations that could be enforced using field citations, descriptions of all the possible violations could not be stated on the citation form. Thus, the violations and the set fines would have to be detailed in a separate document so that the investigator could quickly cite the violation and penalty. As the sample citations show, the section of the regulation and a brief description of the violation would be clearly stated on the citation. The inspector, therefore, would have an additional document detailing the violations in a short form, and the penalties associated with each particular violation. Some effort would be required to develop this penalty document because the short-form wording of the violations must be clear and accurate to avoid overlap of similar violations.

A field citation program also requires that the inspectors be well-trained to identify violations and assess their severity, including the determination of which violations can be adequately addressed by a field citation and which warrant further enforcement action. Because inspectors will have administrative order authority, consistency and competency are important to help ensure that the administrative orders and penalties issued by inspectors would be supported in a court of law, as well as to protect inspectors from liability for technical advice offered during the inspection

process. Thus, a State agency may need to establish a training program for UST inspectors and provide a standardized inspection manual to detail how inspections should be conducted.

How Should Penalties be Established? Field citation programs seem to be most effective when the penalty assessments are relatively small. For example, the Province of Ontario has successfully used field citations (called offense notices in the Province) for several years as a primary enforcement technique for all Provincial and municipal regulations. In 1980, the Provincial Offenses Act was passed which allowed short-form wordings of the regulations to be developed and set fines to be established for specific violations.

Fines for violations of UST regulations within the Gasoline Handling Act range from \$50 to \$150 depending on the seriousness of the violation. For example, failure to display a license in a conspicuous position carries a penalty of \$60 whereas failure to reconcile dipstick readings with meter readings carries a penalty of \$150. However, under Province law, the inspector retains the ability to prosecute violators to the full extent, which may result in up to a \$10,000 fine and/or 1 year in jail if the violator is convicted.

Approximately 80 percent of the owners or operators receiving offense notices have pleaded guilty. Thus, the amount of time inspectors have had to spend in court has been significantly reduced, allowing for better use of their resources. For further information on this program, contact:

Fuels Safety Branch
Ministry of Consumer and Customer Relations
Ontario Province, Canada
(416) 239-2949

In general, penalties for UST violations may range from \$50 to \$500, depending on the severity of violations a State agency may enforce through their field citation program. The penalty should reflect the severity of the violation, yet be small enough to encourage the owner or operator to correct the violation and pay the fine rather than pursue a hearing. Determining fines that are large enough to deter owners and operators from violating the regulations but small enough to provide them with an incentive to pay the fine and correct the violation is critical to a field citation program.

Short-Form Notice of Violation

What is It? The short-form Notice of Violation (NOV) is an administrative order issued by the State agency after reviewing the inspection report filed by the on-site inspector (Exhibit V-28). It informs the owner or operator that a violation has been observed and clearly states the response actions necessary to correct the violation. If the State agency has administrative penalty authority, a penalty may be assessed at that time. The short-form NOV can be used to expedite enforcement in the same way in which the field citation is used. The State agency targets less serious violations, establishes a set fine for specific violations, and offers the violator the opportunity to avoid the formal enforcement process in exchange for prompt action and payment of a small fine. In these cases, additional legal action is necessary only in cases involving contested violations or continued noncompliance.

If the State agency does not have administrative order and penalty authority, a NOV may be modified to have the same effect. For example, an NOV may be used to offer a settlement agreement in which the violator is given an opportunity to correct the violation and pay a small fine without a formal hearing on the matter (Exhibit V-29). The State agency may also cite its authority to pursue civil or criminal penalties and the potential magnitude of those penalties if the violator does not enter into or comply with the settlement agreement. In effect, a settlement agreement is a "carrot and stick" approach to enforcement. The "carrot" is the incentive of a reduced penalty and less time investment if a violator agrees to the terms of the settlement agreement. On the other hand, the "stick" is the risk of being assessed the maximum statutory penalty should the case be taken to court.

The EPA Mobile Sources program has developed both a field citation (Exhibit V-30) and a short-form NOV (Exhibit V-31) with a separate compliance agreement (Exhibit V-32) to enforce gasoline pump nozzle violations. Although the two forms have similar language, the short-form NOV is issued from EPA whereas the field citation would be issued by the inspector. The Mobile Sources program has experimented with both forms, which illustrates how expedited enforcement forms can be

designed and modified to suit the circumstances. The Mobile Sources program served as the model for the sample modified short-form NOV (Exhibit V-29).

When Would You Use It? The short-form NOV is often used by State agencies that have administrative order and penalty authority but choose not to delegate that authority to the inspector. Some State agencies may prefer to retain the authority to issue penalties because it allows inspectors to separate their roles of technical advisor from that of law enforcer.

What Do You Need to Implement Short-Form NOVs? The State agency must have administrative

order authority to assess penalties without a judicial hearing. However, using a predetermined consent agreement as described above would enable a State agency to use expedited procedures without actually having administrative order authority.

State agencies also would need to develop a penalty policy. Many agencies using expedited enforcement procedures have established set fines for the violations that may be cited under a short-form NOV program. Establishing set fines simplifies the penalty process and ensures consistency in the compliance program. Additional information on penalties assessments is provided in the discussion of field citations.

State seal _____
 Department of _____ (1) _____
 Office of _____ (2) _____

Citation Number _____

ON - SITE WARNING NOTICE

Facility Name: _____

Address: _____

Name of Facility Owner or Operator: _____

On _____ (date) _____, a routine underground storage tank inspection was conducted at the abovementioned facility. Regulations concerning underground storage tanks have been promulgated by the State pursuant to _____ (3) _____.

During the inspection, violation of the following requirements were found:

Section _____ (4) _____ (5. description of violation) _____

Section _____ (4) _____ (5. description of violation) _____

To correct the violation, the owner or operator of the abovementioned facility must:

This notice of noncompliance is being issued by the Department of _____ (1) _____ in lieu of further enforcement actions at this time, provided that the violation is promptly corrected. However, this notice may be used as evidence that the abovementioned facility has been cited in violation of the _____ (3) _____, and that the owner or operator of the abovementioned facility may be subject to civil penalties of up to \$ _____ (6) _____ for repeated violations.

If you have any further questions, you may contact _____ (7) _____ at _____ (8) _____

CITATION SERVED BY:

_____ (9) _____ (10) _____ (11)

CITATION RECEIVED BY:

_____ (12) _____ (13) _____

EXPLANATION FOR SAMPLE ON - SITE WARNING NOTICE

- (1) Name of the State Department with enforcement authority for UST regulations
- (2) Name of Office within (1) responsible for implementing UST enforcement procedures
- (3) Specific statutory authority(ies)
- (4) Specific section of the regulation for which a violation has been cited
- (5) Brief description of the violation
- (6) Maximum statutory penalty
- (7) Name of contact at the appropriate Department
- (8) Appropriate telephone number
- (9) Printed name of inspector
- (10) Signature of inspector
- (11) Date
- (12) Printed name of owner or operator
- (13) Signature of owner or operator

State seal
 Citation Number

Department of _____(1)_____
 Office of _____(2)_____

SITE COMPLAINT

Date: _____

1. Facility Owner or Operator: _____
 (Address): _____
 _____(Phone): _____
 Facility Permit Number: _____

2. Contractor: _____
 (Address): _____
 _____(Phone): _____

3. Violation of _____(3)_____

4. Description of Violation: _____(4)_____

5. Accordingly, it is ORDERED that _____(4)_____

☐ Cease and desist by: _____ hrs. _____ 19 _____

☐ Other: _____

Please be advised that you are entitled to a hearing before the Administraion as a result of this Order. If you wish to schedule a Hearing on this matter, the Administration must be so notified in writing within (10)days.

6. "I hearby acknowledge receipt of this Site Complaint by my signature, which is not an admission of guilt."

Person Issued to: _____(5)_____

Authorized by: _____(6)_____

Signature of Inspector: _____(7)_____
I.D. Number

EXPLANATION OF SITE COMPLAINT

- (1) Name of State Department with enforcement authority for UST regulation
- (2) Name of Office within (1) responsible for implementing UST enforcement procedures
- (3) Name of the legislative Act, regulation, or code
- (4) Description of action(s) necessary to correct violation
- (5) Name of owner or operator
- (6) Name of Director of State Office
- (7) Inspector identification number

Front Side

Department of _____ (1)	State seal
Office of _____ (2)	
NOTICE OF VIOLATION OF UNDERGROUND STORAGE TANK REGULATIONS	
On _____ (Date of Violation)	Time a.m. p.m.
At _____ (Name of Facility)	
_____ (Address of Facility)	
Name of Owner or Operator _____ (circle one)	
Formal ID Yes No	
Facility License/Permit No. _____	
<p>As the owner or operator of the above mentioned facility, you have been charged with violation of the _____ (3) _____. You must indicate below for each violation listed whether you admit the violation, admit the violation with an explanation, or deny the violation. You have the right to request a hearing.</p>	
Code (4)	Regulation (5) \$Fine (6)
Nature of violation _____ (7) <input type="checkbox"/> Admit <input type="checkbox"/> Admit with explanation <input type="checkbox"/> Deny	
Code (4)	Regulation (5) \$Fine (6)
Nature of violation _____ (7) <input type="checkbox"/> Admit <input type="checkbox"/> Admit with explanation <input type="checkbox"/> Deny	
Total fine applicable to the above violation(s) \$ _____ (9)	
<p>WARNING: If you do not pay the required fine or request a hearing or an adjudication by mail (see reverse side) within _____ (10) _____ days of service of this notice, you will be subject to the maximum penalties permitted by law, and suspension of your license/permit. The fine will double if payment has not been received within _____ (11) _____ days.</p>	
I personally observed or investigated the violation(s) as noted above.	
_____ (Inspector's signature)	ID No. _____
I hereby acknowledge receipt of this Notice of Violation	
_____ (Signature of Owner or Operator)	

Back Side

YOU ARE REQUIRED TO RESPOND TO THIS NOTICE OF INFRACTION WITHIN _____ (10) _____ DAYS OF THE DATE OF SERVICE TO AVOID BEING ASSESSED A PENALTY EQUAL TO THE AMOUNT OF THE ORIGINAL FINE. YOU MUST RESPOND IN ONE OF THE FOLLOWING WAYS:

TO PAY THE FINE AND WAIVE YOUR RIGHTS TO A HEARING:

- Check the "Admit" box under the violation listed on the reverse side;
- Certify that the violation has been corrected by signing below;
- Make personal check, cashier's check, or money order payable to _____ (1) _____ (no cash by mail)
- Print notice number on the check or money order
- Enclose payment with this notice and mail to:
- Department of _____ (1) _____
- Office of _____ (2) _____
- Address _____

TO ADMIT THE VIOLATION WITH AN EXPLANATION:

- Check the "Admit with Explanation" box under the violation listed on the reverse side
- Certify that the violation has been corrected by signing below.
- Check the appropriate box to request a hearing, choose one of the following methods:

HEARING: To request a hearing, choose one of the following methods:
 (a) Mail this completed notice to the Office of _____ (2) _____
 (b) Appear in person or by authorized representative, at the
 Office of _____ (12) _____, address, between the hours of
 _____ (13) _____

ADJUDICATION BY MAIL: Mail this complete notice to _____ (2) _____ at the above address, along with all evidence relevant to your explanation. Failure to submit sufficient evidence of mitigating circumstances may result in failure to qualify for a reduced or suspended fine.

TO DENY THE VIOLATION:

- Check the "Deny" box under the infraction listed on the reverse side, and:

HEARING: (a) Mail this completed notice to the Office of _____ (2) _____ at the above address; or
 (b) Appear in person or by authorized representative, at the hearing office located at _____ (address) _____ between the hours of _____ (13) _____

You will be scheduled for a hearing and notified of the time, date, and location of the hearing.

You must complete and sign this certification

Name (print) _____ (14) _____
 Street address _____ (15) _____
 City _____ State _____ Zip code _____

I hereby certify under penalty of law, that I have received this notice, answered as indicated on the reverse side, and corrected or made substantial efforts to correct the infraction(s) that I have admitted or admitted with an explanation.

Signature _____ (16) _____ Date _____

EXPLANATION FOR SAMPLE FIELD CITATIONS

- (1) Name of the State Department with enforcement authority for UST regulation
- (2) Name of Office within (1) responsible for implementing UST enforcement procedures
- (3) Name of the legislative Act or regulation
- (4) Specific statutory authority
- (5) Specific section of the regulation for which the violation has been cited
- (6) Set penalty for the violation
- (7) Brief description of the violation
- (8) Violator's response options, marked for each violation cited
- (9) Total of set penalties for all violations cited on this form
- (10) Number of days allowed for violator's response to the citation
- (11) Number of days allowed for violator's response to the citation before a late penalty is assessed
- (12) Name of Office responsible for hearing appeals
- (13) Business hours of the hearing Office
- (14) Name of owner or operator
- (15) Address of facility
- (16) Signature of owner or operator

Front Side

Department of _____ (1)	State seal	
Office of _____ (2)		
WARNING NOTICE OF VIOLATION OF UNDERGROUND STORAGE TANK REGULATIONS		
On _____ (Date of Violation)	Time _____ a.m. p.m.	
At _____ (Name of Facility)		
_____ (Address of Facility)		
Name of Owner or Operator _____ (circle one)		
Formal ID Yes No		
Facility License/Permit No. _____		
<p>As the owner or operator of the above mentioned facility, you have been charged with violation of the _____ (3) _____. You must indicate below for each violation listed whether you admit the violation, admit the violation with an explanation, or deny the violation. You have the right to request a hearing.</p>		
Code 49 CFR Part XX	Regulation Section 280.21	\$Fine 3
Nature of violation _____ Failure to obtain permit <input type="checkbox"/> Admit <input type="checkbox"/> Admit with explanation <input type="checkbox"/> Deny		
Code (4)	Regulation (5)	\$Fine (6)
Nature of violation _____ (7) <input type="checkbox"/> Admit <input type="checkbox"/> Admit with explanation <input type="checkbox"/> Deny		
Total fine applicable to the above violation(s) \$ _____ (9)		
<p>WARNING: If you do not pay the required fine or request a hearing or an adjudication by mail (see reverse side) within _____ (10) _____ days of service of this notice, you will be subject to the maximum penalties permitted by law, and suspension of your license/permit. The fine will double if payment has not been received within _____ (11) _____ days.</p>		
I personally observed or investigated the violation(s) as noted above.		
_____ (Inspector's signature)		ID No. _____
I hereby acknowledge receipt of this Notice of Violation		
_____ (Signature of Owner or Operator)		

Back Side

YOU ARE REQUIRED TO RESPOND TO THIS NOTICE OF INFRACTION WITHIN _____(10)_____ DAYS OF THE DATE OF SERVICE TO AVOID BEING ASSESSED A PENALTY EQUAL TO THE AMOUNT OF THE ORIGINAL FINE. YOU MUST RESPOND IN ONE OF THE FOLLOWING WAYS:

TO PAY THE FINE AND WAIVE YOUR RIGHTS TO A HEARING:

- Check the "Admit" box under the violation listed on the reverse side;
- Certify that the violation has been corrected by signing below;
- Make personal check, cashier's check, or money order payable to _____(1)_____.
(no cash by mail)
- Print notice number on the check or money order
- Enclose payment with this notice and mail to:
- Department of _____(1)_____
- Office of _____(2)_____
- Address _____

TO ADMIT THE VIOLATION WITH AN EXPLANATION:

- Check the "Admit with Explanation" box under the violation listed on the reverse side
- Certify that the violation has been corrected by signing below
- Check the appropriate box to request a hearing, choose one of the following methods:

HEARING: To request a hearing, choose one of the following methods.
 (a) Mail this completed notice to the Office of _____(2)_____
 (b) Appear in person or by authorized representative, at the
 Office of _____(12)_____, address, between the hours of
 _____(13)_____

ADJUDICATION BY MAIL. Mail this complete notice to _____(2)_____ at the above address, along with all evidence relevant to your explanation. Failure to submit sufficient evidence of mitigating circumstances may result in failure to qualify for a reduced or suspended fine.

TO DENY THE VIOLATION:

- Check the "Deny" box under the infraction listed on the reverse side, and,

HEARING: (a) Mail this completed notice to the Office of _____(2)_____ at the above address; or
 (b) Appear in person or by authorized representative, at the hearing office located at _____(address)_____ between the hours of _____(13)_____

You will be scheduled for a hearing and notified of the time, date, and location of the hearing.

You must complete and sign this certification

Name (print) _____(14)_____

Street address _____(15)_____

City _____ State _____ Zip code _____

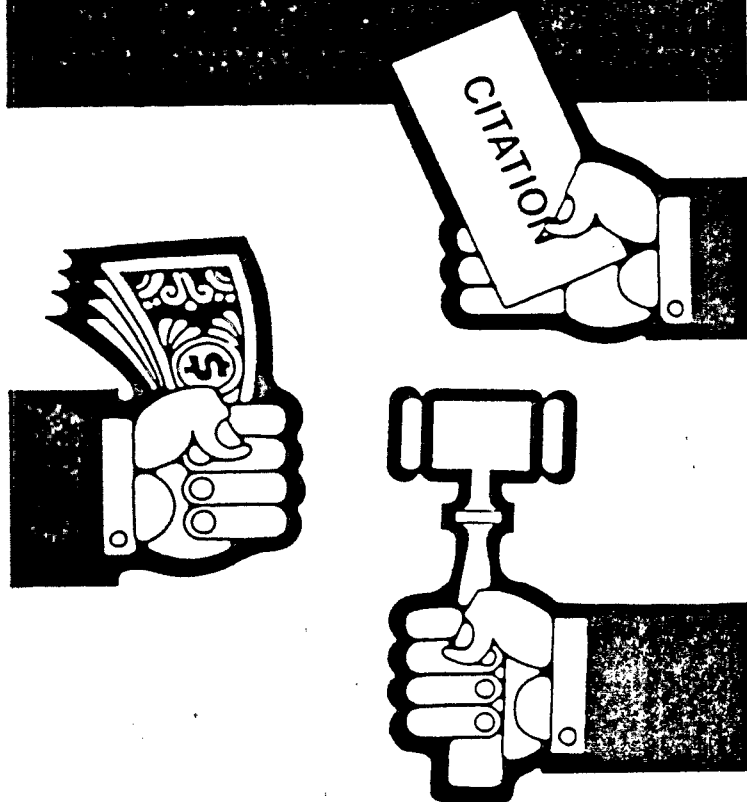
I hereby certify under penalty of law, that I have received this notice, answered as indicated on the reverse side, and corrected or made substantial efforts to correct the infraction(s) that I have admitted or admitted with an explanation.

Signature _____(16)_____ Date _____

EXPLANATION FOR SAMPLE FIELD CITATIONS

- (1) Name of the State Department with enforcement authority for UST regulation
- (2) Name of Office within (1) responsible for implementing UST enforcement procedures
- (3) Name of the legislative Act or regulation
- (4) Specific statutory authority
- (5) Specific section of the regulation for which the violation has been cited
- (6) Set penalty for the violation
- (7) Brief description of the violation
- (8) Violator's response options, marked for each violation cited
- (9) Total of set penalties for all violations cited on this form
- (10) Number of days allowed for violator's response to the citation
- (11) Number of days allowed for violator's response to the citation before a late penalty is assessed
- (12) Name of Office responsible for hearing appeals
- (13) Business hours of the hearing Office
- (14) Name of owner or operator
- (15) Address of facility
- (16) Signature of owner or operator

THE CIVIL INFRACTIONS PROGRAM



THE CIVIL INFRACTIONS PROGRAM

The Department of Consumer and Regulatory Affairs (DCRA) is responsible for the protection of the health, safety and welfare of the citizens of the District of Columbia through the regulation of business activities, land and building use, occupational and professional conduct and standards, rental housing and condominiums, health and social service care facilities, and the physical environment. To ensure that every citizen receives maximum protection, DCRA provides consumer education and information, handles complaints, conducts investigations, and assures compliance with the laws and regulations administered by DCRA.

There are many laws and regulations that fall under the jurisdiction of DCRA. When a specific law or regulation is not followed or is broken, the DCRA Civil Infractions Act of 1985 enables DCRA to issue tickets, collect fines, and hear cases. When a DCRA inspector observes a violation, a ticket will be issued by that inspector. This process is very similar to tickets issued by police officers to drivers who violate traffic laws.

The Civil Infractions Act is implemented by the DCRA Office of Civil Infractions (OCI). OCI provides support services to six DCRA administrations by processing tickets, collecting fines, and scheduling hearings resulting from tickets issued for violations of District of Columbia laws and regulations in the areas of Occupational and Professional Licensing, Insurance, Business Regulation, Building and Land Regulation, Housing and Environmental Regulation, and Service Facility Regulation.

Through the Civil Infractions Program, violations are processed quickly and efficiently as follows: 1) An inspector will issue a citation with a predetermined fine; 2) The violator must pay the fine within 15 days **AND CORRECT THE VIOLATION**. If this is not done, the violator will face a doubling or tripling of the fine and possible suspension or revocation of his/her license or permit; 3) The violator has the right to request a hearing before an Administrative Law Judge (ALJ) if he believes that he should not have received the ticket; and 4) The violator may appeal an unfavorable decision of the ALJ.

OFFICE OF CIVIL INFRACTIONS

The Office of Civil Infractions has three divisions to speed along the processing of violations. They are the Violations Processing Division, the Collections Division, and the Adjudication Support Division.

Violations Processing Division

The Violations Processing Division provides information and assistance to the public concerning the procedures for paying civil fines and/or requesting hearings. It is also responsible for preparing all citations for loading into an automated data system. This

system gives OCI the capability to track a citation from issuance to collections. Once this is accomplished, the system is monitored to identify cases that need to be referred to the Office of Compliance for criminal prosecution or other appropriate actions.

Collections Division

The Collections Division processes all payments received by OCI to insure proper recording and collection of fines. It initiates collection proceedings for delinquent accounts and coordinates suspension or revocation of licenses with the Office of Adjudication, Office of Compliance, and the various Administrations. It also provides collection information to the Administrative Law Judge.

Adjudication Support Division

The Adjudication Support Division provides administrative support to the Office of Adjudication by: processing requests for hearings, coordinating the scheduling of hearings with the Administrative Law Judge, the Office of Compliance, investigators, inspectors, and respondents; receiving mail adjudication; and verifying compliance with the Administrative Law Judge's orders.

OFFICE OF ADJUDICATION

The Office of Adjudication is directed by an Administrative Law Judge who directs, coordinates, supervises, and provides advisory services related to the formal adjudication of cases arising from violation of laws and regulations enforced by the Department of Consumer and Regulatory Affairs. The cases will be heard by the Office's attorney examiners and will fall into one of three major categories: the Consumer Protection, Business Regulation, and Insurance Division; the Land Use and Environmental Regulation Division; and the Occupational, Professional Licensing, Health Care, and Social Services Division, each of which is headed by a senior attorney examiner. Upon conclusion of a case, the attorney examiner is required to write a decision and order which shall include findings of fact and conclusions of law, which is appealable to appropriate appellate bodies.

QUESTIONS AND ANSWERS

Q. WHAT IS A CIVIL INFRACTION?

A A "Civil Infraction" is any act or failure to act which violates any of the laws and regulations administered by DCRA, for which a fine may be imposed under the provisions of the DCRA Civil Infractions Act of 1985.

Q. WHAT KIND OF INFRACTIONS ARE COVERED BY THE ACT?

A Examples of the kind of infractions are: Failure to Post a Certificate of Occupancy, Failure to Renew a Home Improvement License or Pharmacy License, Operating without a Cosmetology License, Food Contamination, Selling/Serving Alcoholic Beverage After Hours, and so on.

Q. WHO ISSUES THESE TICKETS?

A The tickets, which contain predetermined fines, are issued by inspectors and investigators who work for DCRA. Their job is to protect the public by ensuring that businesses comply with required laws and regulations.

Q. WHAT SHOULD I DO IF I RECEIVE A TICKET?

A The fine must be paid within 15 calendar days from the date of service and the violation(s) must be corrected.

Q. WHAT HAPPENS IF I DON'T PAY THE FINE?

A If the fine is not paid within 15 days of the issuance of the ticket, the fine will double. If not paid within 30 days, the fine will triple and collections proceeding will be initiated against you. In addition, you may face possible revocation or suspension of your license or permit to conduct business within the District of Columbia.

Q. WHAT IF I DON'T THINK THE TICKET IS FAIR?

A You have the right to request a hearing before an Administrative Law Judge. This must be done within 15 days of issuance of the ticket. A hearing can be requested one of two ways:

- 1 Write to the hearing office at P.O. Box No. 37140, Washington, D.C. 20013. Your name, address, and citation number must be shown on all correspondence.
- 2 Appear in person, or by authorized representative at the hearing office located at 613 G St., N.W., 7th floor.

Q. WHAT IS AN ADMINISTRATIVE LAW JUDGE?

A An Administrative Law Judge is one who presides at an administrative hearing, with power to administer oaths, take testimony, rule on questions of evidence and make agency determinations of fact and conclusions of law.

Q. WHAT WILL HAPPEN AT THE HEARING?

A If you deny the alleged violation, both you and the inspector who issued the ticket will appear before the ALJ to explain the events which resulted in the issuance of the ticket. After hearing all the testimony, the ALJ will write a decision that will either: uphold the fine; reduce the fine; or dismiss the fine.

Q. DO I HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY?

A. Yes. You have the right to be represented by an attorney of your choice; or you may represent yourself at the hearing.

Q. WHAT HAPPENS IF I DISAGREE WITH THE DECISION OF THE ALJ?

A. You have a right to appeal the ALJ's decision. Appeals can be made to the Board of Appeals and Review (BAR), except for those matters involving issues related to zoning, ABC licenses, professional boards, and rental accommodations. These are handled by the following: Board of Zoning Adjustment, ABC Board, appropriate board or commission, or Rental Housing Commission. All appeals must be filed within 15 calendar days from the date of the decision of the ALJ.

Q. CAN I APPEAL BEYOND THE BOARD OF APPEALS AND REVIEW?

A. Yes. You can appeal to the District of Columbia Court of Appeals. Judicial appeal must be filed within 30 days of service of the administrative appeal decision.

**FOR FURTHER INFORMATION CONTACT
THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF CIVIL INFRACTIONS
613 G STREET, N.W.
7th FLOOR
WASHINGTON, D.C. 20001
TELEPHONE: (202) 347-8530**

EXPLANATION OF SAMPLE SHORT-FORM NOTICE OF VIOLATION

- (1) Name of the State Department with enforcement authority for UST regulation
- (2) Name of Office within (1) responsible for implementing UST enforcement procedures
- (3) Name and address of facility
- (4) Name of owner or operator
- (5) Specific statutory authority(ies)
- (6) Specific section of the regulation for which a violation has been cited
- (7) Brief description of violation
- (8) Set fine for specific violation
- (9) Total penalties for the violations cited
- (10) Maximum statutory penalty
- (11) Name of contact at the appropriate Department
- (12) Telephone number

State seal _____
 Department of _____ (1) _____
 Office of _____ (2) _____

Citation number _____

NOTICE OF VIOLATION

On _____ (date) _____, an inspector from the Department of _____ (1) _____ inspected _____ (name of facility) _____ located at _____ (address of facility) _____ for compliance with _____ (3) _____ of the _____ (4) _____. The facility was found to be in violation of the following requirements:

Section _____ (description of violation) _____ Set penalty \$ _____ (5) _____

Section _____ (description of violation) _____ Set penalty \$ _____

TOTAL \$ _____

The Department encourages the expeditious resolution of these matters. Rather than assessing the maximum civil penalty of \$ _____ (6) _____, the Department will agree to mitigate the penalty to \$ _____ (7) _____ provided that the violation(s) is(are) promptly corrected and this notice is signed and returned to the Department along with a check for the full amount of the penalty. The penalty amount must be mailed within _____ (days) _____ of your receipt of this Notice, or the settlement terms will increase substantially. If a settlement is not reached through this agreement, the matter will be referred to _____ (8) _____ for legal action, and the maximum civil penalty may be imposed at that time. You may send your certified check in the amount of \$ _____ (7) _____, made payable to _____ (1) _____ and the signed waiver below to _____ (address of Department) _____.

You are encouraged to sign this notice in accordance with the terms above. If you have any further questions, you may contact _____ (9) _____ at _____ (10) _____.

SETTLEMENT AGREEMENT

Citation Number _____

Name of Facility _____

Address of Facility _____

Name of Owner or Operator _____

Settlement under this expedited procedure is conditioned on payment of the penalty of \$ _____ (7) _____ within _____ (days) _____ of receipt of this notice, and correction of the conditions in violation of the State's underground storage tank regulations. The undersigned owner or operator in settlement of the violation(s) described on this notice, certifies that he/she has corrected the violation, and has enclosed a check for \$ _____ (7) _____ in payment for the violation.

_____ (11) _____

_____ (date) _____

EXPLANATION OF MODIFIED SHORT-FORM NOTICE OF VIOLATION

- (1) Name of the State Department with enforcement authority for UST regulation
- (2) Name of Office within (1) responsible for implementing UST enforcement procedures
- (3) Name of the legislative Act or regulation
- (4) Specific statutory authority(ies)
- (5) Set penalty for each specific violation
- (6) Maximum civil penalty under the appropriate statute
- (7) Total penalties for the violations cited
- (8) Brief description of the appeals/court procedure
- (9) Name of contact within the Department
- (10) Appropriate telephone number
- (11) Signature of owner or operator

United States Environmental Protection Agency
Washington, DC 20460



**Notice of Violation
of Sec. 211
of the Clean Air Act**

To: Operator of Retail Outlet Violation Number 0226
Name _____
Address SAMPLE
City, State, and ZIP Code _____

Re: Inspection of Gasoline Pump Nozzle

Date of Inspection	Inspection Form No.
Pump Serial No.	Nozzle Gauge Number

The U.S. Environmental Protection Agency has inspected this retail outlet and determined that a gasoline pump used for dispensing leaded gasoline was equipped with a nozzle spout having a terminal end of less than 0.930 inch outside diameter. This constitutes a violation of 40 CFR sec. 80.22(f)(1), for which the Clean Air Act authorizes a penalty assessment of \$10,000 per violation per day. However, if you follow the Expedited Settlement procedures, this matter can be settled for \$200. This notice only pertains to this violation and to no other violation of the Clean Air Act or other laws or regulations.

Signature of Inspector

Richard G. Kozlowski

Richard G. Kozlowski, Director
Field Operations & Support Division

EPA Form 3520-7 (9-87)

Expedited Settlement

To settle, you must immediately correct the violation, and, within twenty days of your receipt of this notice, complete the settlement agreement (below), and send the agreement together with your certified check in the amount of \$200 to:

The Director
Field Operations and Support Division
U.S. EPA (EN-397F)
401 M Street, SW
Washington, DC 20460

Make your certified check payable to the "United States of America," and write on the check the violation number printed on the Notice of Violation.

If you do not agree to settle on these terms, the settlement terms acceptable to this Agency will increase substantially, and the case may be formally referred to the U.S. Department of Justice for prosecution for the civil penalty of \$10,000 per day of violation.

If you have any questions you may contact the Eastern Field Office at (202)382-2643 or the Western Field Office at (303)234-~~2280~~.

Settlement Agreement

Settlement under this expedited procedure is conditioned on payment of \$200 within 20 days and correction of the violation.

The retailer, in settlement of this violation of 40 CFR sec. 80.22(f)(1), certifies, under civil and criminal penalties for making a false submission to the United States Government, that he/she has corrected the violation, and has enclosed a certified check for \$200 in payment of the civil penalty for the violation..

Legal or Corporate Name of Retailer

Printed Name of Person Signing	Date Signed
Signature	

EPA Form 3520-7 (9-87) Reverse

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOTICE OF VIOLATION NO. N

TO:

On _____, inspectors of the U.S. Environmental Protection Agency (EPA) inspected _____ located at _____, for compliance with section 211 of the Clean Air Act, 42 U.S.C. §7545, and the regulations issued thereunder (40 C.F.R. Part 80). This law prohibits gasoline retailers from equipping a pump used to dispense leaded gasoline with a nozzle spout which has an outside diameter of less than 0.930 inch. This law also requires that all pumps have a label affixed specifying the type of gasoline dispensed by that pump. The law subjects violators to a civil penalty of \$10,000 per day for each violation.

During the inspection of this facility, the inspectors determined that a pump with serial number _____, used to dispense leaded gasoline into motor vehicles, was equipped with a nozzle spout having an outside diameter of less than 0.930 inch. It was also determined that _____ pumps did not have the required labels affixed.

The EPA encourages the expeditious resolution of these matters. Rather than assessing the statutory penalty of \$10,000, the EPA will agree to mitigate the penalty to \$200 provided that you promptly correct the violations and sign and return the enclosed Agreement along with a check for \$200, as specified in the Agreement. The penalty amount and signed Agreement must be mailed within 30 calendar days of your receipt of this Notice, or the settlement terms acceptable to this Agency thereafter will increase substantially. If you still choose not to settle, I intend to refer the matter for prosecution by the U.S. Department of Justice for the maximum civil penalty of \$10,000 per day of violation.

We encourage you to sign the enclosed Agreement in accordance with the terms provided therein. If you have any further questions, you may contact at (202) 382-

Richard G. Kozlowski, Director
Field Operations and Support Division

Enclosure

bcc:

Enclosure 2
Proposed Agreement

(OUTLET)

) Notice of Violation No. I -
)
) COMPLIANCE AGREEMENT

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereinafter "EPA") and [name] located at [address] (hereinafter "Respondent").

1. On [date], Notice of Violation No. I - was issued to Respondent stating that on [date] Respondent violated § 211 of the Clean Air Act, 42 U.S.C. § 7545, and the regulations promulgated thereunder, 40 C.F.R. Part 80, as described therein.

2. As a retailer, Respondent is liable for a violation of 40 C.F.R. § 80.22(a) as specified in the Notice of Violation.

3. Jurisdiction to settle this matter exists pursuant to § 211 of the Clean Air Act, 42 U.S.C. § 7545, 40 C.F.R. Part 80, and other provisions of law.

4. Respondent has taken remedial action to prevent further violations by informing all employees of the prohibition against allowing a vehicle labeled as requiring unleaded gasoline from fueling from leaded pumps, and implementing procedures to ensure against future violations.

5. Respondent agrees to pay \$200, to be enclosed with this Agreement, by cashier's check or certified check payable to "United States of America." The check and signed Agreement shall be forwarded within 30 calendar days of the date of receipt of the above-referenced Notice of Violation to Director, FOSD, U.S.E.P.A. (EN-397P), 401 M Street, S.W., Washington, D.C. 20460.

6. The parties agree that resolution of this matter in accordance with this Compliance Agreement is both appropriate and in the public interest, and Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issues of fact or law relating to the matters consented to herein.

BY: _____
Respondent

By: _____
Richard G. Kozlowski, Director
Field Operations and Support Division
U.S. Environmental Protection Agency

ENFORCEMENT RESPONSE (cont.)

Pump Tagging

One effective way of inducing an owner or operator to correct a serious violation or to cooperate with State authorities is to shut down the tank. For retail operations, tagging the opening to the tank can be a warning to distributors that the UST is in violation and, therefore, should not be filled. This provides a considerable commercial incentive for the owner or operator to deal with the compliance problem expeditiously. Also, the State might choose this passive approach rather than the more resource intensive and time-consuming pursuit of an injunctive order or other formal action. In addition, cutting off supply of product reduces the risks of initial escape or further contamination.

The City of Austin, Texas, takes a *formal* approach to "red tagging" USTs that violate certain provisions of its UST regulations. The red tag is actually a cease-and-desist order authorized under the city's building code (Exhibit V-33). For new construction, in this case, UST installation, a building permit must be obtained and proper installation procedures followed. Failure to install an UST properly leads to its being tagged, which essentially shuts down the installation.

The Austin inspector proceeds as follows:

- Verbal notice is given, and a 24-hour compliance deadline is imposed.
- If the violation is not corrected, written notice is given and a 24-hour compliance deadline is imposed.
- If compliance is still not achieved, the red tag is posted (Exhibit V-34).

- (e) Any person violating any of the provisions of this Article, upon conviction, shall be fined in an amount not exceeding \$1,000. Each violation hereof occurring during a calendar day shall be a distinct and separate offense from such a violation occurring during the next preceding or next following calendar day.
- (f) It shall not be necessary for the complaint filed in any case hereunder to negate any exception, whether exemption or variance, contained in this Article concerning any prohibited act; but, any such exception made herein may be used as a defense by any person charged by such complaint.
- (g) Nothing herein shall limit the City's authority to seek injunctive or other civil relief available under the law.

SEC. 13-15-215. CEASE AND DESIST ORDER

- (a) When either the Office of Environmental Resource Management (ERM), Public Works Department, Water and Wastewater Utility, Electric Utility, or Building Inspection Department determines that there has been noncompliance with any material term, condition, requirement or agreement under this Article, the person who either has or should have obtained an approved development permit shall be ordered to cease and desist from allowing further development and/or from allowing transportation of construction material to the alleged noncompliant site until such site is in compliance with this Article.
- (b) Said cease and desist order ("Red Tag") shall be in writing and shall be posted on the site.
- (c) The City shall bring suit in a court of competent jurisdiction to restrain and enjoin any person attempting or allowing development or construction without an approved development permit or any person failing or allowing failure to cease and desist from further development or construction under Subsection (a).
- (d) No further City inspection or utility connections shall be made until such site is in compliance with this ordinance, as determined by the Chief Environmental Officer of the City.

SEC. 13-15-216. APPEAL OF CEASE AND DESIST ORDER

- (a) Appeal of a cease and desist order, issued pursuant to Section 13-15-215, may be made by the person aggrieved to the Chief Environmental Officer. Such appeal shall be perfected by giving written notice containing the following information to the Chief Environmental Officer within three (3) days of the posting on the site of the cease and desist order:

1. The name and address of the person making the appeal
 2. The facts surrounding the particular ruling
 3. The ruling of the issuing department
 4. The technical reasons why the ruling should be set aside.
- (b) Within a period of three (3) days from the filing of the appeal, the Chief Environmental Officer or his designee shall hear the appeal together with technical testimony of the person making the appeal, or his technical expert, and the department, and make a decision either affirming or reversing the department's decision within two (2) days thereafter. The person requesting the hearing shall be notified of the decision in writing. The notification shall be accompanied by a statement of the reasons for the decision.
- (c) Appeal of the Chief Environmental Officer's decision may be made by the person aggrieved to the Planning Commission. Such appeal shall be perfected by giving a written notice containing the following information to the Chairman of the Planning Commission within three (3) days after the receipt of the decision of the Chief Environmental Officer:
1. The name and address of the person making the appeal.
 2. The facts surrounding the particular ruling.
 3. The rulings of the issuing department and Chief Environmental Officer.
 4. The technical reasons why the ruling should be set aside.
- (d) The Planning Commission shall hear the appeal at the next regular meeting following receipt of the notice. If the appeal is not heard by the Planning Commission within twenty (20) days from the filing of the appeal with the Commission, the appeal shall be deemed granted.
- (e) Appeal under this Section shall not stay the cease and desist order.

SEC. 13-15-217. CERTIFICATE OF COMPLIANCE OR OCCUPANCY

No City utilities may be connected to a site unless a certificate of compliance is issued by the Department of Public Works when the development is completed pursuant to requirements of this Article for areas outside the City limits or until the Building Inspection Department issues a certificate of occupancy with the written concurrence of the Director of Public Works for areas within the City limits. Requests by the developer/owner for a certificate of compliance or occupancy for development other than single-family or duplex residential housing construction shall be accompanied by a certificate prepared and signed by a professional engineer registered in the State of Texas attesting to the completion of the project in substantial conformance with the development permit.

SEC. 13-15-218.-220. RESERVED

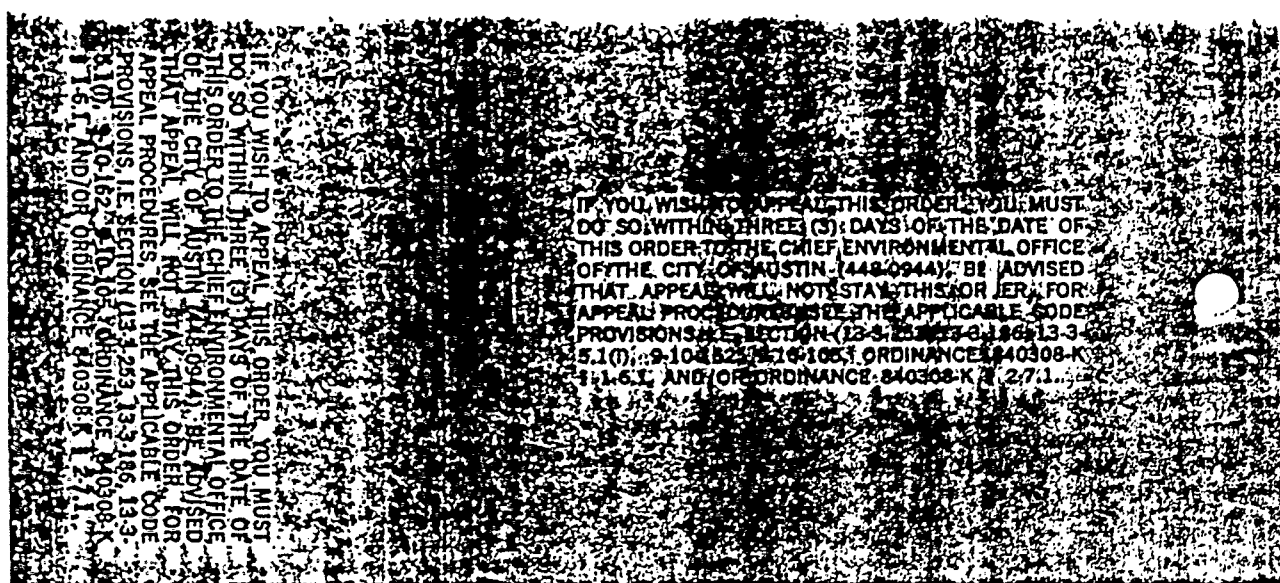
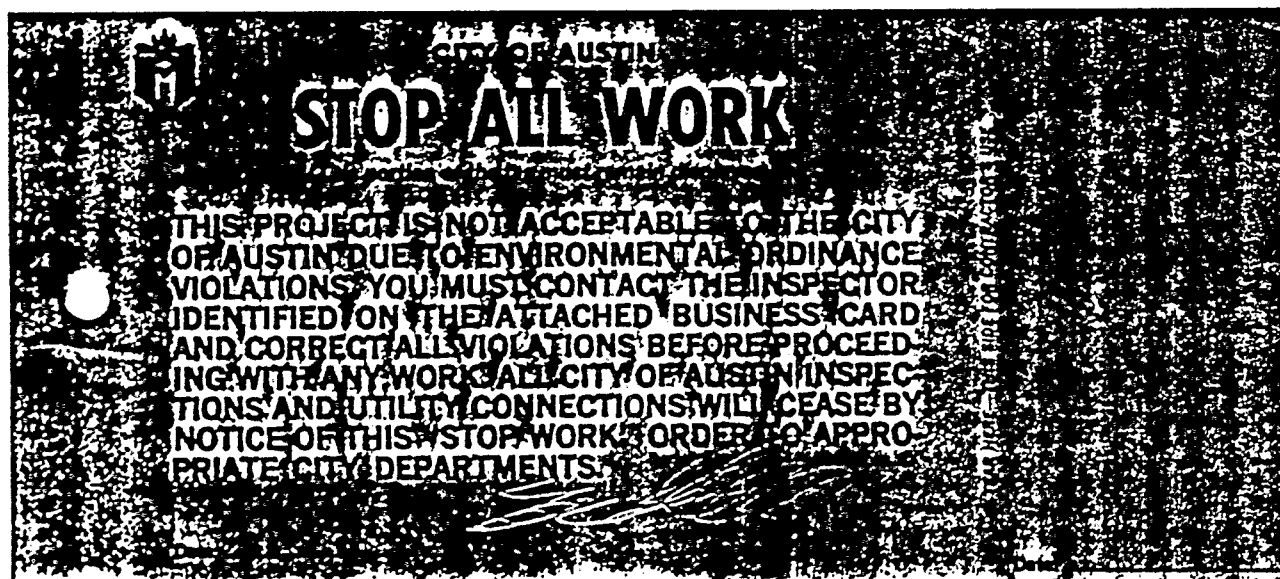


Exhibit V-34. Austin (Texas) Environmental Office
Red Tag - Stop All Work

ENFORCEMENT RESPONSE (cont.)

UST Prosecution Summary

The California UST program delegates program responsibility to the counties and cities. Most of the implementing agencies in these counties and cities do not have the authority to assess penalties (administrative authority) and must rely on the local District Attorney to assess fines. To aid the District Attorney in the processing of a case, the County of San Mateo has developed an Underground Tank Prosecution Summary (Exhibit V-35) that allows the implementing agency to transmit the necessary information to the District Attorney.

The prosecution summary is only used when all other means of encouraging compliance have failed. When noncompliance is discovered, San Mateo officials first attempt to use informal means (e.g., phone calls, letters) to persuade the owner or operator to come into compliance. If noncompliance persists, the case is sent to the District Attorney via the prosecution summary. Because the District Attorney has a heavy workload, the prosecution summary allows cases to be processed more quickly.

The prosecution summary contains the following information:

- Background Information. Includes information on the tank owner, property owner, and the tank operator such as name, address,

telephone, date of tank purchase. In addition, the type of business is described and the names of the corporate offices or principals are included if appropriate.

- Tank Information. Includes information on the location, volume, and contents of the tank.
- Initial Permit Inspection Information. Includes information obtained from the initial permit inspection, such as the date of inspection, the name of the inspector, inventory reconciliation information, the monitoring devices used, the leak history, and the monitoring alternatives discussed with the owner or operator. Also included is information on the initial permit inspection timetable, specifying the dates on which the owner or operator was required to have a precision test performed and submit plans for new monitoring devices.
- Contacts with Owner or Operator. The dates, type, and contents of all discussions between the owner or operator and county officials are detailed.
- Leak or Disposal Evidence. Includes information on the leaks discovered.
- Sampling and Analysis. Includes all information on sampling and analysis of the leak.
- Suggested Violations. The suggested violations, the period of violation, and the legal citation are included.

UNDERGROUND TANK PROSECUTION SUMMARY

D.A.'s Case # _____
E.H. Staff _____

1. Tank Owner:

- a. Name: _____
- b. Business entity (i.e. sole owner, corp. etc.)

- c. Address: _____

- d. Telephone: _____
- e. Date ownership acquired: _____
- f. Corporate Officers/Principals: _____

2. Tank Operator:

- a. Name: _____
- b. Business entity (i.e. sole owner, corp. etc.)

- c. Address: _____

- d. Telephone: _____
- e. Description of business: _____

5. Interim Permit:

- a. Issued: Yes or No _____
- b. Date Issued: _____

6. Initial Permit Inspection Form:

- a. E.H. Inspector: _____
- b. Inspection Date: _____
- c. Owner/Operator Contacted: _____
- d. Inventory Reconciliation: _____
- _____
- _____
- _____
- _____
- e. Monitoring Wells on site: _____
- _____
- _____
- _____
- _____
- f. Leak History: _____
- _____
- _____
- _____
- _____
- _____

g. Any apparent unauthorized release: _____

h. Hazardous waste generated: _____

i. Monitoring alternative discussed: _____

j. Additional Comments: _____

7. Initial Permit Inspection Timetable:

ACTIVITY	COMPLETION DATE
a. Precision testing of tank and pipeline:	
b. submission of plans for monitoring underground storage tanks.	
c. Other requirements:	
d. Owner/operator signature's _____	
e. Date: _____	

8. E.H. Contacts with owner/operator re: status:

Date	E.H. Staff	Owner/ Operator Rep.	Person, letter, Telephone	Discussion

5. Data interpretation: _____

10. Pre-filing Field Inspection: Date: _____

a. D.A. Inspector: _____

b. E.H. Staff: _____

c. Owner/operator contacted: _____

d. Ownership status: _____

e. Tank status: _____

f. Permit Progress: _____

g. Disposal/leak status: _____

h. Misc: _____

11. Suggested Violations:

<u>Code§(s)</u>	Description of Violation	Period of Violation	Misc.

ENFORCEMENT RESPONSE (cont.)

Penalty Matrix

Although States need legal authorities to impose penalties for regulatory violations, they may not want to be restricted to applying the same penalty to different violations. To consistently apply appropriate penalties to various violations, States may wish to develop a penalty matrix.

The attached sample of a penalty matrix (Exhibit V-36) indicates the factors that New Mexico takes into account when determining penalties. The matrix applies to civil penalties authorized by the New Mexico Water Quality Act. The purpose of the penalty policy is to provide fair treatment to violators and encourage them to

correct the situation as needed to obtain compliance. In determining the penalty for a violation, the State takes into account:

- Violation circumstances – including type of violation, threat to human health and the environment (particularly via contamination of ground water of a water supply), and volume of leak or discharge;
- Number of days in violation; and
- Adjustment factors – such as prompt response to release, ability to pay, and history of noncompliance.

Each factor is given a rating number, and the numbers are totalled to give an overall rating.

UST PENALTY ASSESSMENT POLICY

The UST penalty policy applies to civil penalties authorized by Sections 74-6-1 et. seq. NMSA 1976 of the New Mexico Water Quality Act. The goals of this policy are:

Deterrence.

Fair and equitable treatment of the regulated community of Underground Storage Tank Owners and Operators.

Swift resolution of environmental problems.

Protection of public health and drinking water supplies.

The penalty calculation is done by determining a base penalty based on the type of violation, threat to the environment and public health, and then adjusting the base penalty for special circumstances.

GUIDELINES FOR CALCULATING BASE PENALTIES

1. VIOLATIONS:

Each violation should be checked and corresponding points totalled.

2. CONTAMINATION OF GROUNDWATER OR A WATER SUPPLY:

This calculation takes into account the extent of contamination or the immediacy of any threat of such contamination, the number of private wells contaminated, whether an alternative water supply is readily available, and the number of people supplied by the contaminated system. The description which best describes the current situation should be chosen.

3. OTHER THREATS TO PUBLIC HEALTH, ENVIRONMENT, OR PUBLIC NUISANCES:

If there are other threats to public health or the environment not accounted for in 2, these should be factored in here. Check each of the answers which currently apply to this case and total these points.

Other public nuisances include potential threats to both human and non-human life. The emphasis should be placed on the potential harm or nuisance caused by a violation, rather than on whether harm has actually occurred. Staff must describe in detail the specific facts which were considered in each case such as explosivity, vapors in excess of health standards, impacts to surface water, fish, livestock, other

wildlife, unpleasant smells, etc. This factor is to be calculated on a 10 to 50 point sliding scale.

4. VOLUME OF LEAK OR DISCHARGE:

The total volume leaked or discharged should be used to choose the appropriate point score. The source of this information must be included, as well as the date it was reported. If no data is available to determine this volume, staff should choose the unknown category which calls for a point score of 200. This represents the maximum penalty thus penalizing the responsible party for failure to keep accurate inventory records, as is required by law.

5. DAYS IN VIOLATION:

The days on which violations began and ended should be noted here.

ADJUSTMENT FACTORS

Adjustment factors take into account other factors related to the violator which are not reflected in base penalty calculations. These adjustments are centered around the responsible party's ability to pay penalties, the relative impact of the penalty in deterring further violations, and the amount of cooperation shown by the responsible party. These factors should enhance deterrence for a particular responsible party. Application of the adjustment factors is cumulative, more than one factor may apply in one case. Adjustments should be made as described below.

1. GOOD FAITH ADJUSTMENTS:

When a responsible party violates the Water Quality Act and regulations, he or she should be encouraged to come into compliance as quickly as possible. In order to encourage swift remediation of the problem, staff may reduce the penalty amount based on the responsible party's good faith attempts to initiate reclamation based on the following criteria:

30% - prompt and aggressive initiation of reclamation, generally through prompt data collection and reporting, and effective remediation efforts. Absence of willful, repeated violations. Period of violation must be less than two weeks from when the responsible party knew or should have known of the violation.

20% - reasonably prompt but slightly reluctant initiation of reclamation. Absence of repeated violations.

10% - initiation of reclamation with barely acceptable

promptness. Absence of easily remedied violations such as immediately stopping the source of the leak, immediately skimming the free-floating product, and other measures which will prevent the spread of contamination.

Staff calculating the good faith factor must specify on the worksheet what actions were considered in the analysis. The good faith factor is limited to the responsible party's behavior only up to the date the calculation is performed.

2. HISTORY OF NON-COMPLIANCE:

Where a responsible party has previously violated the Water Quality Act and regulations at the same or any other site, this is usually clear evidence that the responsible party was not deterred by the previous enforcement response. Unless past or present violations were caused by factors entirely beyond the control of the violator, this is an indication that the penalty should be adjusted upwards. In evaluating the following adjustment factors a violation is considered "similar" if the previous enforcement response should have alerted the responsible party to a particular type of problem. A "prior" violation includes any act or omission for which a formal enforcement response was taken (i.e. a notice of violation, a warning letter, lawsuit filed, or compliance order issued), or for which informal written notice was given by the Bureau to the violator.

Increases for history of non-compliance should be made as follows:

30% - one or more similar prior violations within the last three years, to which the violator responded reluctantly.

20% - one or more prior violations within the last five years to which the violator responded reluctantly.

10% - one or more prior violations which were remediated promptly and completely.

3. SIZE OF THE COMPANY:

Many of the Underground Storage Tank owners in New Mexico are individuals or small companies with limited capital reserves unable to cover both remediation costs and a large penalty. Moreover, for a small company with a small

operations budget, a lower penalty will undoubtedly provide adequate deterrence, when compared to a penalty for a much larger company. In order to ensure that funds are available for remediation and clean-up, and in order to fairly assess a penalty, staff may adjust the base penalty for the size of the company. One relatively simple method for estimating the size and operating budget of a company is determining its number of employees. The penalty should be decreased by the following percent based on the number of employees:

15 or fewer.....	30%
16 to 30.....	20%
31 to 50.....	10%

The number of employees should not be based solely on the number of employees at the violating facility, but on the total number of employees of the company, including its wholly-owned subsidiaries and/or parent companies. Staff should clearly explain the source of this data and should not estimate in the absence of reasonable information. This can be adjusted later if the company questions or complains about the penalty, and then provides information supporting a reduction.

**PENALTIES FOR FAILURE TO REMEDIATE
CONTAMINATION CAUSED BY LEAKING UNDERGROUND STORAGE TANKS**

This document sets forth the Underground Storage Tank Program's policy for assessing penalties for failing to take appropriate and necessary steps to contain and remove or mitigate the damage caused by an illegal discharge. Water Quality Control Commission Regulation 1-203 promulgated under the Water Quality Control Act (Section 74-6-1 et. seq. NMSA 1976) gives the authority for such an assessment.)

- 1) Violations: (Check all violations which currently apply to this case; more than one may apply)
 - ☐ a. Failure to initiate clean-up. (200)
 - ☐ b. Major Settlement Agreement (100 for each)
 - violations (ie. turning off remedial system, discharging contaminated water, etc.)
 - ☐ c. Failure to report a leak or spill (75)
 - ☐ d. Failure to use approved methods (50)
 - or technologies for clean-up.
 - ☐ e. Minor Settlement Agreement (35 for each)
 - violations (ie. late monitoring reports, etc.)
 - ☐ f. Not in compliance with applicable (20)
 - rules, regulations, permits, and statutes (ie. NFPA 30, EPA Interim Prohibition etc.)
- 2) Contamination of ground water or a water supply: (Check one)
 - ☐ a. Public well, OR greater than 10 private (200)
 - wells, OR plume less than 100 feet from a non-community well, OR less than 300 feet from a community well.
 - ☐ b. 6 to 10 private wells affected or (150)
 - immediately endangered, OR well is in a sole source aquifer.
 - ☐ c. 1 to 5 private wells affected or (100)
 - immediately endangered, OR contaminant plume is 100 feet from a private well, OR surface water (used for drinking water) is endangered.
 - ☐ d. Private wells affected, but alternate (50)
 - water supply is available (able to drill an uncontaminated well on-site or able to connect to a community or city water supply).
 - ☐ e. Ground water contaminated, but no (20)
 - use endangered in the immediate future.

3. Other threat to public health, the environment, non-human health or life, or other public nuisances: (Check all which currently apply to this case)
- ☐ a. Explosivity > 100% LEL (100)
OR 30 - 100 % LEL (50)
 - ☐ b. Toxic vapors in excess of health standards. (100)
 - ☐ c. Contamination of an irrigation well, (20)
or surface water (not used for drinking water).
 - ☐ d. Other nuisances. (Depending on severity, 10 - 50)
4. Volume of leak or discharge: (Check one)
- ☐ a. < 100 gallons (10)
 - ☐ b. 101 - 1000 gallons (50)
 - ☐ c. 1001 - 10,000 gallons (150)
 - ☐ d. > 10,001 gallons (200)
 - ☐ e. unknown, no data available (100)
5. Number of days in violation _____
6. Adjustment Factors: (Check all which apply to this case, and fill in the appropriate percent reductions).
- ☐ a. Good faith
 - ☐ b. History of non-compliance
 - ☐ c. Size of the company

PENALTY CALCULATION WORKSHEET

.....

Name of UST case _____

Location of site _____

Site contact _____

Reviewer's name _____

Date of review _____

.....

1. Total points for all violations which currently apply to this case. _____
2. Number of points which correspond to the type of groundwater contamination at this site. _____
3. Total points for other threats to public health and the environment. Give a detailed description of factors considered in choosing the corresponding points. _____
4. Points corresponding to the volume of leak or discharge. What is the source of this data? _____

SUBTOTAL _____

5. Number of days in violation. _____

TOTAL BASE PENALTY
(number of days in violation X SUBTOTAL) _____

.....

6. Adjustment factors

a. Size of company (Give detailed reasons for adjustment).
Reduce by _____%

b. Good faith (Give detailed reasons for adjustment).
Reduce by _____%

c. History of non-compliance (Give detailed reasons for adjustment).
Increase by _____%

TOTAL ADJUSTMENTS _____

.....

Penalty due \$ _____

Reviewer's signature _____ Date _____

Approved by:

Program Manager _____ Date _____

Attorney _____ Date _____

PROGRAM DELEGATION

Memorandum of Understanding

The most common method of delegating program responsibility to a locality is through a memorandum of understanding (MOU). The State of New Mexico used an MOU to delegate certain UST program responsibilities to the City of Albuquerque (Exhibit V-37). The MOU gives the City of Albuquerque the authority to locate and investigate USTs within the county surrounding Albuquerque. The City must prioritize sites where contamination is found, using the LUST ranking

form (Exhibit V-22), and must provide a prioritized list to the State monthly.

The MOU does not allow the City to undertake formal enforcement actions against parties legally responsible for contamination. However, the State agrees to take enforcement actions against all sites that have a priority ranking score above a set minimum. Thus, the MOU benefits both parties. The State benefits by having the City agree to undertake compliance monitoring activities, relieving the State of this work. (Albuquerque has the highest concentration of tanks in the State.) The City benefits by having the State agree to use its enforcement powers against serious violations within the county.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
ENVIRONMENTAL IMPROVEMENT DIVISION OF THE
NEW MEXICO HEALTH AND ENVIRONMENT DEPARTMENT
AND THE
CITY OF ALBUQUERQUE

WHEREAS, the Environmental Improvement Division of the New Mexico Health and Environment Department ("NMEID") has authority under the Hazardous Waste Act, SS 74-4-1 through 74-4-13 NMSA 1978 as amended by Laws 1987, Chapter 179, to abate water pollution and other health threats resulting from leaking underground storage tanks ("LUSTs") located in New Mexico; and

WHEREAS, the City of Albuquerque through its Environmental Health Department ("AEHD"), has authority under its municipal charter and under SS 3-43-1 and 34-43-2 NMSA 1978, to protect the health of the citizens of Albuquerque; and

WHEREAS, the investigation and remediation of ground-water contamination caused by leaks of petroleum products from LUSTs is critical for the protection of drinking water sources, the environment, and public health; and

WHEREAS, NMEID and the City of Albuquerque wish to ensure that their respective resources are used effectively and efficiently in the investigation and prosecution of LUST incidents; and

WHEREAS, NMEID and the City of Albuquerque wish to coordinate their deterrance and remediation efforts within Bernalillo County;

NOW, THEREFORE, NMEID and the City of Albuquerque enter into this Memorandum of Understanding ("MOU") regarding the investigation and prosecution of LUST incidents within Bernalillo County:

1. The AEHD, in performing its functions under this MOU, shall act with the same authority granted the NMEID by the Hazardous Waste Act and regulations promulgated pursuant thereto and shall comply with all provisions of the regulations governing EID inspection and sampling attached hereto as Exhibit "A".

2. Notwithstanding the agency relationship between NMEID and AEHD created by this MOU no employee or agent of the City of Albuquerque shall be construed as an employee of the State of New Mexico nor shall any employee of the State of New Mexico be construed as an employee of the City of Albuquerque as a result of activities performed under this MOU.

3. The State of New Mexico in the LUSTTF grant proposal shall request \$100,000 to help the City of Albuquerque defray its expenses incurred under this MOU.

4. The City of Albuquerque shall hold the NMEID and the State of New Mexico harmless from any liability resulting from acts performed by employees or agents of the City of Albuquerque pursuant to this MOU. The State of New Mexico and the NMEID shall hold the City of Albuquerque harmless for any liability resulting from acts performed by employees or agents of the NMEID or the State of New Mexico pursuant to this MOU.

5. Within thirty days after the date this MOU becomes effective, NMEID and AEHD will meet to discuss and agree upon methods of investigation, parameters to be tested, and other necessary procedures.

6. In the event that AEHD is denied entry to any site for which it is delegated investigatory authority under this MOU, or is denied access to records or other information necessary to any investigation under this MOU, AEHD shall inform NMEID of the circumstances of such denial. NMEID shall take any necessary legal action to compel entry to such sites or access to such records or information, and AEHD will cooperate with NMEID in providing evidence needed in connection with such legal action.

7. All testing and analysis required during the course of any investigation under this MOU shall be conducted by the Scientific Laboratory Division

of the Health and Environment Department.

8. Except as provided in paragraph 10 of this MOU, AEHD will locate and investigate, to the extent possible, underground storage tank sites within Bernalillo County where leaks may have occurred, particularly at abandoned tank locations and those located in environmentally sensitive valley areas where the depth to groundwater is shallow. AEHD will characterize the presence, type, and extent of groundwater contamination and assess the threat to the public health posed by contamination of public or private wells and explosive or dangerous levels of vapors.

9. AEHD will prioritize sites where contamination is found, using the LUST ranking form attached to this MOU as Exhibit B, and provide to NMEID, monthly, a prioritized list of all sites where contamination has occurred, where tanks have been illegally abandoned, or where owners have failed to properly register underground storage tanks with NMEID. AEHD will also provide NMEID with any reports or studies arising from these investigations.

10. NMEID will continue to exercise full authority over underground storage tank sites at facilities or on land owned by the City of Albuquerque or Bernalillo County.

11. NMEID will integrate the prioritized list of sites within Bernalillo County into the state-wide priority ranking maintained by NMEID.

12. The office of the general counsel of the Health and Environment at the request of NMEID and according to the priorities established by NMEID will take enforcement actions against parties legally responsible for contamination in the order determined by the priority ranking for the State. The City of Albuquerque has no duty nor authority to prosecute, litigate or take any enforcement action under MOU. NMEID will also attempt to assure that all sites which have a priority ranking score of 50 or more receive enforcement or further investigation and to provide emergency

response to those sites scoring greater than 80.

13. In the event of litigation in any LUST case, NMEID and AEHD will cooperate in providing any testimony, including expert testimony, that may be necessary for proper litigation of the case. In the event experts not employed by NMEID or AEHD are necessary, such experts shall be procured and paid by NMEID.

14. NMEID will use federal LUST Trust Funds (LUSTTF), when they become available, to contain and remediate contamination from LUSTs and to provide funds for alternative drinking water supply or relocation where necessary. NMEID will abate pollution at such sites through use of LUSTTF funds in an order determined by the UST priority ranking system for the State.

15. NMEID and AEHD will exchange information relevant to LUST sites in Bernalillo County on a monthly basis. The parties will coordinate training to develop skills in LUST remediation, investigation, and case development.

16. Any settlement agreements in LUST cases shall be solely between NMEID and the responsible party or parties.

17. AEHD will conduct any post-settlement monitoring required by any settlement agreement in LUST cases arising out of Bernalillo County.

18. This MOU shall be effective upon the date signed by the last signing person whose signature is required as indicated by the signature lines herein, and may be terminated by either party upon thirty days written notice to the other party.

ENVIRONMENTAL IMPROVEMENT
DIVISION


CITY OF ALBUQUERQUE


MICHAEL J. BURKHART, Director


GENE ROMO, Chief Administrative Officer

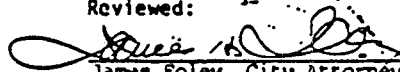
Dated: Aug 3, 1987

Dated: 9-14-87
Recommended:

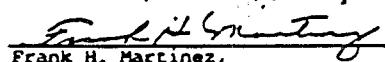

LOUIS W. ROSE, Deputy General
Counsel
Health and Environment Department


for SARAH B. KOTCHIAN, Director
Albuquerque Environmental Health
Department

Dated: Aug. 4, 1987

Dated: August 4, 1987
Reviewed:  8/4 ^{and 8/6/87}
James Foley, City Attorney

Dated: 8/14/87
Recommended:


Frank H. Martinez,
Deputy Chief Administrative Officer

Dated: 9/11/87

APPENDIX

LIST OF INTERVIEWEES

CALIFORNIA

California State officials

Roger Johnson
California State Water Resources
Control Board
901 P Street, P.O. Box 100
Sacramento, CA 95801
(916) 322-0210

Dave Barker
Senior Water Resources Control Engineer
San Diego Regional Water Quality
Control Board
9771 Claremont-Mesa Street, Suite B
San Diego, CA 92124-1331
(619) 265-5114

Peter Johnson
Regional Water Quality Control Board,
San Francisco Division
1111 Jackson Street, Room 6040
Oakland, CA 94607
(415) 451-7232

County and city officials

Bruce Benike
UST Program Manager
Contra Costa County Department of
Health Services
1111 Ward Street
Martinez, CA 94553
(415) 646-4416

Gary M. Carozza
Environmental Health Services
Fresno County Department of Health
P.O. Box 11867
Fresno, CA 93775
(209) 445-3357

Robert B. Holden
Supervising Environmental Health Officer
San Luis Obispo County Health Department
P.O.Box 1489
San Luis Obispo, CA 93406
(805) 549-5544

Phil Duffy
Assistant Director
Office of Environmental Health
San Mateo County
Department of Health Services
590 Hamilton Street
Redwood City, CA 94063
(415) 363-4305

Gary Schmitz
Chief, South County Fire Authority
666 Elm Street
San Carlos, CA 94070
(415) 593-8016

Randy Miller
Hazardous Materials Inspector
San Luis Obispo Fire Department
748 Pismo Street
San Luis Obispo, CA 93406
(805) 549-7380

Victoria Gallagher
San Diego County Department of Health
1700 Pacific Highway
San Diego, CA 92101-2417
(619) 236-2237

MARYLAND

Maryland State officials

Bernard Bigham
Hazardous and Solid Waste Management
Administration
Department of Environment
201 West Preston Street
Baltimore, MD 21201
(301) 225-5649

Herbert Meade
Hazardous and Solid Waste Management
Administration
Department of Environment
201 West Preston Street
Baltimore, MD 21201
(301) 225-5649

Edwin C. Weber
Hazardous and Solid Waste Management
Administration
Department of Environment
201 West Preston Street
Baltimore, MD 21201
(301) 225-5649

Montgomery County officials

Lieutenant Dan Wetsel
Fire Marshal
101 Monroe Street
Rockville, MD 20850
(301) 251-2440

Jim Caldwell
Department of Environmental Protection
101 Monroe Street
Rockville, MD 20850
(301) 251-2440

Prince Georges County officials

Thomas Cooksey, Fire Inspector
Bureau of Fire Prevention
4318 Rhode Island Avenue
Brentwood, MD 20722
(301) 699-2955

Major Stanley L. Poole, Jr.
Bureau of Fire Prevention
4318 Rhode Island Avenue
Brentwood, MD 20722
(301) 699-2955

Captain James G. Tauber
Supervisor, Bureau of Fire Prevention
4318 Rhode Island Avenue
Brentwood, MD 20722
(301) 699-2955

Baltimore County officials

John Carrigan, Building Inspector Supervisor
Department of Permits/Licenses
111 W. Chesapeake Avenue
Towson, MD 21204
(301) 494-3953

Dick Seim, Plans Review
Department of Permits/Licenses
111 W. Chesapeake Avenue
Towson, MD 21204
(301) 494-3610

Jerry Sierwieski
Waste Management Section
Department of Environmental Protection
401 Bosley Ave., Room 416
Towson, MD 21204
(301) 494-3768

Baltimore City officials

Bromwin Phillips
Neighborhood Progress Administration
Department of Housing and Community
Development
222 E. Saratoga St., #100
Baltimore, MD 21202
(301) 396-3460

Lieutenant T. Crue, Fire Marshal
1100 Hillen Street
Baltimore, MD 21202
(301) 396-5755

MASSACHUSETTS

Massachusetts State officials

Joseph O'Keefe
Office of the State Fire Marshal
Department of Public Safety
1010 Commonwealth Avenue
Boston, MA 02215
(617) 566-4500

Greg Mooney
Office of the State Fire Marshal
Department of Public Safety
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Frank Sciannameo
Massachusetts Department of Environmental
Quality Engineering
1 Winter Street
Boston, MA 02108
(617) 292-5648

Helen Waldorf
Massachusetts Department of Environmental
Quality Engineering
1 Winter Street
Boston, MA 02108
(617) 292-5648

Yarmouth City officials

William A. Greene, Jr.
Deputy Chief Yarmouth Fire Department
96 Maine Street
South Yarmouth, MA 02664
(617) 398-2212

MINNESOTA

Minnesota State officials

Steve Lee
Director's Office
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155
(612) 296-7278

Roger Stead
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155
(612) 296-7957

John N. Holck
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155
(612) 296-7743

NEW MEXICO

New Mexico State officials

Karl Souder
Program Manager
UST Section
New Mexico Environmental Improvement
Division
P.O. Box 968
Santa Fe, NM 87504
(505) 827-0188

Peter Maggiore
Remedial Action Coordinator
UST Section
New Mexico Environmental Improvement
Division
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Santa Fe, NM 87504
(505) 827-0188

RHODE ISLAND

Rhode Island State officials

Howard Cohen
Office of Legal Services
Department of Environmental Management
9 Hayes Street
Providence, RI 02908
(401) 277-2771

Saverio Mancieri
Division of Groundwater and Freshwater
Wetlands
Department of Environmental Management
83 Park Street
Providence, RI 02903
(401) 277-2234

TEXAS

Texas State officials

Dwight Russell
Texas Water Commission
P.O. Box 13087 Capitol Station
1700 North Congress Avenue
Austin, TX 78711
(512) 463-7830

John Jameson
Texas Water Commission
P.O. Box 13087 Capitol Station
1700 North Congress Avenue
Austin, TX 78711
(512) 463-7830

City of Austin officials

John Parrish
City of Austin
Department of Environmental Protection
P.O. Box 1088
Austin, TX 78767
(512) 499-2737

Craig Carson
City of Austin
Department of Environmental Protection
P.O. Box 1088
Austin, TX 78767
(512) 499-2737

Linda Arredondo
Coordinator, UST Program
City of Austin
Department of Environmental Protection
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Austin, TX 78767
(512) 499-2737

